

## **The complaint**

Mrs A complains that Clydesdale Financial Services Limited trading as Barclays Partner Finance ("BPF") is holding her liable for a credit agreement she took out to buy a new phone. Mrs A says the phone wasn't delivered.

Mrs A is being represented in this complaint, but for ease of reference I'll refer to Mrs A throughout my decision, and set out any submissions made by her representative as being made by herself.

## **What happened**

Mrs A ordered a new phone using a fixed sum loan agreement from BPF in November 2023. The phone cost around £1,200 and the agreement was to be repaid over two years.

Mrs A says the phone was a gift to her sister. However, she says that when the package was delivered by the courier, the phone wasn't in the box; a power bank had been delivered instead.

Mrs A contacted the supplier to complain and says they didn't help her. She also reported the matter to the police but says they told her this was a civil issue between herself and the supplier. So, Mrs A contacted BPF for help.

BPF considered a claim for Mrs A under section 75 of the Consumer Credit Act 1974 (s.75) but declined this. They said the goods had been deemed to have been delivered in line with the sales order, and they had come to this conclusion because the supplier had provided proof of delivery. BPF suggested that Mrs A contact the police or Action Fraud as her claim related to theft and/or fraudulent activity.

Mrs A complained to BPF about the claim outcome. BPF didn't uphold the complaint and reiterated what they had previously said about the claim. Mrs A remained unhappy and referred her complaint to our service.

Our investigator didn't recommend that Mrs A's complaint should be upheld. She felt the video evidence Mrs A had submitted of her sister opening the box and examining its contents would have been more persuasive in respect of Mrs A's claim had the video been continuous rather than split over separate, short videos. Our investigator said the package appeared to have been delivered correctly and that she hadn't seen evidence that it didn't contain the phone that Mrs A had ordered. So, she didn't feel there were grounds to say that the supplier had breached the contract and that BPF had to do something to put things right as a result.

Mrs A didn't agree with our investigator's view and submitted further evidence. In summary, she said that:

- You could see glue residue on the brown packaging box which indicated it had been tampered with.

- Her husband had ordered a similar phone, and the packaging was different to the one used for the delivery of the phone she'd ordered.
- The delivery driver who was supposed to deliver the package wasn't the driver who came to the door.
- Her sister split the videos because she didn't want them to be too long. She also knew that the phone was being delivered that day.
- There were several text messages between Mrs A and her sister mentioning that there was a different delivery driver being present.

Our investigator wasn't persuaded to change her view of the complaint. So, it's been passed to me to decide.

### **What I've decided – and why**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

BPF is seeking payment under a regulated fixed sum loan agreement and our service is able to consider complaints relating to these sorts of agreements. BPF is the creditor and so is also responsible for dealing with claims for breach of contract or misrepresentation made under s.75. The supplier is connected to BPF which is why BPF has been able to respond to questions about the delivery of the phone.

I'll never know exactly what happened here. And where the evidence is incomplete, I have to reach my decision on the balance of probabilities.

There are a few possibilities about what happened. The phone could have been switched by Mrs A's sister, by the courier or by someone at the supplier's warehouse. I note though that the packaging seemed pretty secure, in that the item in the box was secured in a brown box, which was then put into a secure outer soft wrapping. It would be difficult to conclude in my view that the package was intercepted and then replaced with the power bank.

I've considered Mrs A's evidence about the package being tampered with, noting she has sent a photo to us of glue on the brown box which presumably means she feels someone reapplied this after taking about the phone. However, the videos of her sister opening the packaging and taking out the power bank doesn't clearly show that glue was applied or that the packaging had been tampered with.

What I'm considering here is how BPF dealt with the s.75 claim based on the evidence they asked for, received and considered. I think from the evidence they had, the fact they asked the supplier for their version of events (which they gave to them by sending proof of delivery and comments about the phone being in the bag with no signs of tampering, and that all their own checks had been completed regarding the order), means that BPF likely had not enough grounds to say there had been a breach of contract.

I should say that what Mrs A says happened, may well have happened. I'm certainly not discounting that what she ordered wasn't delivered to her. But a s.75 claim isn't really the best method to decide this dispute. It essentially is one of potential fraud and is one that is perhaps better referred to a body such as Action Fraud. Neither us, nor BPF, are able to compel the supplier or the courier, or any other relevant third party, to provide formal testimony and evidence about for example, who the courier was, whether the courier was the correct one, whether there had been complaints about the courier about similar allegations, and whether the supplier had previous issues at the warehouse where phones weren't packaged correctly or replaced with other items. Without this sort of evidence, it's not possible for BPF (or indeed I) to think that it was more likely than not that the phone wasn't delivered in line with the sales order.

So, with the above in mind, I don't think that it was unreasonable or unfair for BPF to decline Mrs A's s.75 claim. I won't be upholding her complaint against BPF as a result.

Mrs A is under no obligation to accept my decision and her legal rights about this dispute won't be affected as a result. She may wish to refer her dispute to a body such as Action Fraud.

### **My final decision**

For the reasons set out above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs A to accept or reject my decision before 26 June 2025.

Daniel Picken  
**Ombudsman**