

The complaint

Mr A is unhappy with the way Clydesdale Financial Services Limited trading as Barclays Partner Finance (BPF) dealt with a claim for money back for a phone he bought through a fixed sum loan agreement with it.

What happened

Mr A bought a phone online through a retailer I'll call M in December 2020. He paid around £1,000 using a fixed sum loan agreement from BPF. He needed to make monthly repayments of around £38 for 24 months towards the loan.

Mr A said the phone started experiencing issues with overheating and being unresponsive in April 2021 and he reported this to M around early June 2021. He has provided evidence to show that he contacted M to arrange a service appointment. Mr A said he took the phone into a service centre on M's instructions, but said it refused to repair or replace the phone. Mr A sent the phone to M around December 2021, but it was returned without repair.

There's correspondence to show that Mr A tried to arrange a return of the phone and the messages he received suggest he was incorrectly told by M he would receive a replacement phone, with mention of potential compensation too.

Mr A wanted BPF to consider a claim under Section 75 of the Consumer Credit Act 1974 (Section 75) around April 2023. BPF declined the claim because it said there wasn't evidence to demonstrate the phone was faulty. BPF said M told it that an appointment was arranged in August 2021, which was cancelled by Mr A and no issues were found with the phone in the second appointment in December 2021. BPF didn't agree there was a breach of contract it could be held jointly liable for. Mr A disagreed and said BPF interpreted the relevant legislation incorrectly and failed to recognise the fault was reported within the first six months of him obtaining the phone from M.

Mr A resubmitted a Section 75 claim to BPF around March 2024. BPF declined the claim and said that the necessary debtor- creditor-supplier (DCS) agreement for a claim to be considered didn't exist as Mr A bought the phone for a family member. Mr A was unhappy as BPF didn't state this in his previous claim and felt it didn't consider the claims properly.

Mr A wants BPF to accept that the phone he bought was faulty, give him a full refund and provide compensation for the way it handled his claims.

Mr A told this service that the phone was sold to fund a replacement.

Our Investigator reviewed the complaint and didn't uphold it. He didn't agree with BPF that the necessary DCS agreement wasn't in place and thought a Section 75 claim could be considered. However, he wasn't satisfied that there was enough evidence to demonstrate there was a fault which meant the phone wasn't of satisfactory quality. Therefore, he didn't think there was a breach of contract.

Mr A didn't agree, in summary he said:

- BPF is jointly liable with M under Section 75 for any service or contractual issues.
- Under the Consumer Rights Act 2015 (CRA), faults within the first six months are presumed present at purchase unless proven otherwise.
- Neither M nor BPF provided evidence the device was fault-free.
- M initially acknowledged issues and even promised compensation, suggesting a fault was present.
- He spent a significant period of time and effort in trying to find a resolution and this caused him distress and inconvenience.
- He wants the Financial Ombudsman to direct BPF to provide evidence the phone was fault free.
- He also said that BPF didn't act in line with the Financial Conduct Authority's Consumer Duty.

As Mr A disagreed the complaint has been passed to me to make a decision.

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.

When considering what is, in my opinion, fair and reasonable, I must take into account relevant law and regulations; regulator's rules including the Consumer Duty, guidance and standards; codes of practice; and what I believe to have been good industry practice at the relevant time. Where evidence is incomplete, inconsistent or contradictory, I reach my decision on the balance of probabilities – in other words, what I consider most likely to have happened in light of the available evidence and wider circumstances.

Mr A bought a new phone using a fixed sum loan agreement with BPF. This is a regulated consumer credit agreement, and our service is able to consider complaints relating to these sorts of agreements.

It's clear Mr A feels strongly about this matter, and I mean no discourtesy where I haven't commented on each individual point he has raised. I've focused on what I consider are the key elements of the complaint. It's clear Mr A raised concerns about the phone over a number of years with M and made repeated efforts to resolve the issues. He's provided a considerable amount of evidence to support his complaint. Mr A is unhappy with the level of communication including how M responded to the problems he reported. However, I must emphasise I'm not considering a complaint against M, but rather I'm looking at BPF as the finance provider and considering if BPF has acted fairly and reasonably in the way it handled Mr A's request for his money back.

I've considered the applicable legislation and in this case Section 75 holds BPF liable for a like claim for any breach of contract or misrepresentation by the supplier - M, provided certain conditions are met. Mr A bought the phone from M using a fixed sum loan agreement from BPF. Although Mr A mentions his family member was the primary user, I can see the phone was addressed and delivered to Mr A and he is named on the invoice. I agree with the Investigator and think the required DCS agreement between the parties is in place because Mr A is the contracting party. Additionally, I'm satisfied the claim falls within the appropriate financial limits.

I have nothing to suggest that the phone was misrepresented to Mr A when he bought it, so I've focused on whether Mr A provided enough evidence to show there had been a breach of contract.

The Consumer Rights Act 2015 (CRA) is also relevant to this complaint. The CRA implies terms into the contract that goods supplied will be of satisfactory quality. The CRA also sets out what remedies are available to consumers if statutory rights under a goods contract are not met. The goods were new so should have been in perfect working order when sold.

The CRA sets out that goods which do not conform to the contract at any time within the period of six months beginning with the day on which the goods were delivered to the consumer must be taken not to have conformed to it on that day. Unless, it's established the goods did conform to the contract on that day or that the application is incompatible with the nature of the goods or with how they fail to conform to the contract.

Mr A said he reported problems with the phone within six months of receiving it, and that he believes it's for M and BPF to show the phone was free from fault at that time. Based on the evidence I've seen, I'm satisfied Mr A reported issues to M about the phone within six months of buying it. However, I have to consider that just because Mr A reported a fault, doesn't automatically mean BPF then needs to go and prove there isn't one.

I've thought about what the expectations are under the CRA, and I've considered the guidance from the Department for Business and Innovation & Skills¹. This broadly sets out that as a starting point within six months from delivery, the consumer would need to show some evidence of what the fault was and once this is established, the fault generally assumed to have been present at the time of delivery, "(it is then for the trader to rebut this)". Mr A said there were problems he experienced, but that's not the same thing as showing a fault. I'd need to be satisfied there was a fault, and this fault meant the phone was of unsatisfactory quality.

I've considered the evidence Mr A has provided, including his testimony about the problems he experienced, along with his communication with M. He said the phone became unresponsive and overheated. It seems M did what is common and agreed to inspect the phone (more than once), but it wasn't able to establish a fault. Additionally, I haven't seen any independent evidence to show that the phone had an inherent fault or any evidence to demonstrate the issues Mr A said he experienced such as video or photo proof of the problems. Other than Mr A saying there were problems with the phone, I haven't seen any evidence to support this.

Given Mr A hasn't given BPF the first evidence (of a fault), it's not unreasonable it didn't think there was a breach of contract. I haven't seen anything that clearly shows these were due to a fault with the phone. Phones can become unresponsive or overheat for a number of reasons that aren't necessarily linked to a fault. And so, I don't think BPF was unreasonable in concluding there wasn't enough evidence to show the phone wasn't of satisfactory quality which meant there was a breach of contract. Because of this I'm not persuaded BPF can be held liable for a like claim for a breach of contract.

I understand Mr A is unhappy with how BPF handled his Section 75 claim. He raised concerns in April 2023 about faults he said he'd experienced with the phone, and BPF responded by explaining that, as more than six months had passed since the purchase, it would need evidence of a fault. BPF also referred to M's comments, who had seen the phone in December 2021 and didn't agree it was faulty.

Mr A said that there were no instructions about the next steps from BPF and he had to contact it again in March 2024. However, I don't think there were any other instructions BPF

¹ <https://www.businesscompanion.info/sites/default/files/CRA-Goods-Guidance-for-Business-Sep-2015.pdf>

was required to give Mr A. If he was unhappy, he had the option to make a complaint at that time.

When BPF reconsidered the matter in 2024 it said it didn't believe there was a valid DCS agreement in place and that the claim didn't meet the requirements of Section 75. As I have already mentioned, I don't think BPF assessed this part correctly as I'm satisfied that the necessary DCS agreement was in place for a Section 75 claim to be considered.

I appreciate it would've been confusing for Mr A when BPF gave a different answer to its original outcome on the claim. However, I don't think BPF's approach to this particular point had a material impact on the overall outcome of the claim. This is because BPF had already explained it needed evidence of a fault that made the goods of unsatisfactory quality, in order to uphold the claim, and Mr A hadn't provided that evidence when the claim was reconsidered in 2024. I understand Mr A has said that he spent a considerable amount of time dealing with this matter – around four years, but I think much of that was dealing with M and the service Mr A received from it– which I can't hold BPF responsible for. Even if M did cause Mr A issues, I don't think it's fair for him to claim for non-financial losses against BPF through a breach of contract claim, because that sort of loss isn't recoverable in court (for claims like this). I can consider the impact of BPF's handling of the claims and I think BPF seemed to have answered both claims within a reasonable period of time, so it didn't act unfairly.

While BPF said it couldn't consider a claim in 2024, I don't think this made a difference to the outcome of the Section 75 claim. I think there's insufficient evidence to demonstrate that there was a fault with the phone that made it of unsatisfactory quality and therefore I don't think BPF was unfair to conclude there was no breach of contract. And for that reason, I don't think it would be fair to require BPF to pay compensation. I've also noted that Mr A referenced the Consumer Duty, which was introduced by the FCA for events after 31 July 2023. Mr A hasn't specified what part of this he thinks BPF didn't adhere to. However, I've considered the relevant events this would've applied to, and I'm not persuaded in this case that BPF needed to do anything more for Mr A in light of the Consumer Duty.

While I know it'll disappoint Mr A, I'm not going to direct BPF to take any further action or refund him any money.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 22 August 2025.

Amina Rashid
Ombudsman