

The complaint

Miss J is unhappy with how Clydesdale Financial Services Ltd (“Clydesdale”) handled her claim for a refund.

What happened

In April 2024, Miss J purchased a pair of headphones online from a supplier I shall call “B”. Miss J paid for these goods using a fixed sum loan (loan) from Clydesdale.

The item was meant to be delivered to Miss J, however a third party delivery company I shall call “F” left the item on the doorstep of her home. Miss J wasn’t at home at the time and she arrived back to discover the package wasn’t there.

Miss J raised the matter with B but was told that she had given instructions to leave the item at her safe place which was her front porch. Miss J didn’t agree and said no such instruction had been provided.

As the matter wasn’t satisfactorily addressed by B, Miss J contacted Clydesdale to raise a Section 75 (S75) claim under the Consumer Credit Act 1974 (CCA) against them.

Clydesdale considered the claim but felt there wasn’t sufficient evidence of a breach of contract here and said the goods had been delivered as instructed.

Miss J didn’t agree. She said that a previous parcel delivery from F (from another supplier) hadn’t been left at her home and was returned as she wasn’t in at the time. She says she hadn’t changed these preferences with F prior to this delivery and therefore the item wasn’t delivered correctly.

Miss J then raised a complaint about Clydesdale’s handling of her claim. Their subsequent final response letter confirmed the S75 outcome was correct and they’d not done anything wrong.

As Miss J didn’t agree, she brought her complaint to our service. Our investigator considered the complaint and while they empathised with Miss J’s situation, they agreed that Clydesdale hadn’t done anything wrong for the same reasons.

As Miss J remained dissatisfied, she asked for an ombudsman to provide a final decision on the matter.

I previously issued a provisional decision. In summary I said:

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

I’ve read and considered the evidence submitted by the parties but won’t comment on it all – only the matters I consider to be central to this complaint. This isn’t intended as a discourtesy but reflects my role in resolving disputes informally.

It's important to note that Clydesdale aren't the provider of the goods here – so in deciding what is fair and reasonable, I'm looking at their particular role as a provider of financial services. In doing so I note that because Miss J paid for this transaction using a fixed term loan, a S75 claim could possibly help her. So in deciding what is fair and reasonable I've focussed on this.

S75

S75 provides that in certain circumstances the borrower under a credit agreement has an equal right to claim against the credit provider if there is either a breach of contract or misrepresentation by the supplier of goods and services.

S75 has certain technical requirements for there to be a valid claim. I'm satisfied those are in place here. So, in considering how Clydesdale responded to Miss J's claim, I've gone on to consider if there is a likely breach of contract or misrepresentation by the supplier which Clydesdale is responsible for putting right

Regarding this, I don't think the focus of Miss J's claim is misrepresentation – but breach of contract relating to the delivery of her goods. So I don't think it necessary to consider misrepresentation in any depth here.

In order to assess a valid claim, Clydesdale would've then needed to consider all relevant evidence regarding the alleged breach of contract.

Miss J has purchased the goods from B who is a supplier. The law implies certain terms into a contract of sale in these circumstances. In particular, the Consumer Rights Act 2015 (CRA) implies certain terms into the contract regarding delivery of goods. It also defines delivery and talks about where risk resides until the goods come into the physical possession of the consumer. Specifically, section 28 (S28) of the CRA says:

“28 Delivery of goods

(1) This section applies to any sales contract.

(2) Unless the trader and the consumer have agreed otherwise, the contract is to be treated as including a term that the trader must deliver the goods to the consumer.

“delivery” means voluntary transfer of possession from one person to another”.

Moreover the CRA makes it clear the goods remain at the trader's risk until they come into the physical possession of the consumer, or a person identified by the consumer takes possession of the goods.

Miss J and Clydesdale disagree about whether the goods were delivered as agreed – i.e. whether the item should've been delivered to her possession or left in a safe space. Where the evidence is incomplete, inconclusive or contradictory (as some of it's here), I reach my decision on the balance of probabilities. In other words I consider what is most likely to have happened in the light of the available evidence and the wider circumstances.

I've reviewed B's correspondence to Clydesdale regarding this claim and they've said that their policy is for the delivery to the premises indicated rather than the customer themselves. I've also reviewed B's terms and conditions regarding shipping and delivery and note it says (their name has been substituted by 'B' here):

“We will, however, work with you to ensure a smooth delivery. As B takes care of the dispatch of the products you purchase on the B Store, the risk of loss of, or damage to, products shall pass to you when you, or a person designated by you, acquires physical possession of the products.”

However these terms do need to be considered with mind to the fact that a consumer may ask for an item to be left in a ‘safe spot’ and so a transfer of the item to the recipient’s physical possession wouldn’t be possible in those situations. I think it’d be reasonable to consider that if a consumer opts for a safe spot delivery, the risk will then pass to the consumer once that package is delivered to that location rather than their physical possession as stated in these terms.

I also note there is an express term for the requirement of a signature for delivery of courier and postal deliveries of orders over £200. It says a signature ‘may’ be required to receive the item. Having reviewed the purchase invoice, I see the cost of the item was over £200 so would fall under this but these terms then don’t confirm that a signature is mandatory, but only that it’s a possibility. B confirmed in their correspondence to Clydesdale that they consider a consumer choosing a specific safe spot as the same as obtaining a signature (as the consumer has opted to accept delivery there).

I’m therefore persuaded that it was reasonable for F to have left the item in a safe spot ‘if’ there is sufficient evidence that this was requested, with mind to S28 of the CRA.

B has provided a system screenshot detailing the delivery information and under ‘Consumer Safe Place Instruction’ it states ‘Front Porch’. B hasn’t been able to provide information on when this update occurred – and so whether this option was selected for a prior delivery (and Miss J forgot to change it back) or if it was selected for the delivery in question. However they have confirmed it was the instruction at the time of this delivery.

I’ve also seen a photograph of the package left outside Miss J’s door and she hasn’t disputed that this is her property. Therefore I’m satisfied the delivery did occur and so the only issue is on whether Miss J gave the instruction for the item to be left outside.

Miss J provided a copy of her delivery history with F and pointed to a delivery scheduled previously where the package was taken back as she wasn’t at home. She has said she hadn’t made a change since then.

Clydesdale has said in their submission to us however that B confirmed that F aren’t able to insert any delivery instructions on behalf of their customers. Therefore this would mean that Miss J would’ve needed to do this herself, for example on F’s mobile app.

With all of this in mind, I’ve to consider what is most likely to have happened here as there are a contradictory version of events regarding the delivery preferences for Miss J’s package.

It's unfortunate that there isn't a further audit trail to show the delivery preference change on F's end as that would've shed even more light on this matter. But I do have to consider that B has provided evidence of F's delivery instructions, that F has confirmed they can't change this manually and they also confirm a safe place instruction for the 'front porch'. While I appreciate Miss J has said she didn't make this change, I can't explain how the error then occurred on either B or F's end.

So while this'll be disappointing to Miss J, I've insufficient evidence here that B didn't follow the required instructions regarding her delivery. This would mean she would still be liable for her payments under the finance agreement with Clydesdale as there is insufficient evidence of a breach of contract by B.

In summary I can't say Clydesdale has done anything wrong then in declining her S75 claim, and so I don't think they need do anything more".

Clydesdale responded to my provisional findings to advise they had nothing further to add. Miss J didn't respond to my findings.

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.

As neither party have added anything further, my findings remain the same. I don't consider Clydesdale need do anything more.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss J to accept or reject my decision before 10 July 2025.

Viral Patel
Ombudsman