

## The complaint

Ms F complains about how Clydesdale Financial Services Limited (trading as Barclays Partner Finance) dealt with her request for a refund of her purchase of a mobile phone, and related issues.

## What happened

In August 2021 Ms F bought a mobile phone from a third party which I will call “the merchant.” There was a 14-day cooling-off period in which she could return the phone for any reason. On the fourteenth day, she called the merchant and asked to return the phone. On that call, the merchant arranged an appointment in five days’ time (early September) for her to go into a store and return the phone. But when she went there the store refused to accept the phone, because by then it had been longer than 14 days since the purchase – even though she had made her request in time.

Ms F had paid for the phone with a regulated fixed-sum loan financed by Barclays Partner Finance (“BPF”). (She paid a deposit of £200, and the rest, £1,198, was to be repaid in 24 monthly instalments.) So she complained to BPF. Meanwhile, she didn’t make any loan payments, except for one in February 2022. The arrears were reported on her credit file.

BPF investigated the matter, and in or around October 2021 it persuaded the merchant to accept the return of the phone. BPF therefore agreed to cancel the loan agreement, refund Ms F’s payments, and amend her credit file once the phone had been returned. However, by June 2022 Ms F had still not returned the phone, because she insisted that the merchant should come and collect it from her home instead. So in that month, BPF sent her a final response letter in which it told her that nothing would happen until she returned the phone, and that meanwhile it was still reporting the arrears on her credit file. At around that time, Ms F cancelled her direct debit. BPF instructed a debt collector.

In February 2023, BPF sent Ms F another final response letter, in which it told her that she had had a fair opportunity to return the phone, and so BPF considered that her right to return it had now expired. It reminded her that her account was in arrears, and that her credit file was being affected.

In May 2023, Ms F brought this complaint to our service. She wanted BPF to cancel the debt and refund her deposit and her monthly payment, and to treat the phone as having been returned even if the merchant would not take it back.

BPF said that the 14-day cooling-off period was only about withdrawing from the loan agreement, not about cancelling the purchase of the phone. It said Ms F had never been entitled to return the phone, and that the merchant had only agreed to let her do that in October 2021 as a gesture of good will, and not because it had to. As Ms F had never returned the phone, despite being reminded to by BPF, the merchant eventually told BPF that its offer to accept it back was now closed. Consequently, Ms F remains liable under the loan agreement, which has always been in arrears. BPF said it sent Ms F a default notice in May 2022, and it had then defaulted her account in June because it had received no further payments from her.

One of our investigators looked into this complaint. At first, he didn't uphold it. He pointed out that the loan terms and conditions state that cancelling the loan does not cancel the purchase of goods. If Ms F had cancelled the loan, she would still have been liable to repay it to BPF, unless she returned the phone too, which she hadn't. There was no evidence of any breach of contract or misrepresentation by the merchant, and so Ms F did not have a claim against BPF under section 75 of the Consumer Credit Act 1974 ("section 75"). Her loan had been defaulted and the arrears reported to her credit file because she hadn't been making payments. For those reasons, he did not uphold this complaint. He also said that some of Ms F's complaint had not been brought in time, under our time limits, for us to look into it now.

Later, in response to a question from the investigator, BPF said the reason it had not considered a claim under section 75 in 2021 was because Ms F had not alleged that the phone had been faulty. Indeed, she had said at the time that the merchant had found the phone to be still in good, sellable condition when she had tried to hand it back at the store.

Meanwhile, in November 2023, Ms F provided evidence of the merchant's returns policy. This said that customers may return an item within 14 days, and receive a refund. Based on this new evidence, our investigator upheld this complaint, and recommended that BPF unwind the loan agreement, remove it from her credit file, and refund the one payment she had made, with interest.

BPF did not accept the investigator's revised opinion, so this case was referred for an ombudsman's decision. I wrote a provisional decision which read as follows.

### **What I've provisionally 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.

Having done so, I do not uphold it. Before I explain why, I will deal with the time limits issue which was mentioned by my colleague in his original opinion.

#### My jurisdiction over this complaint

Rules made by the FCA say that our service cannot consider a complaint which has been brought more than six months after the respondent sends the complainant its final response to the complaint. BPF has issued four final response letters about complaints arising from this loan agreement, although only three of them are relevant to this case.

The first letter was issued in October 2021, in which BPF first told Ms F that the merchant had agreed to take the phone back, and that BPF would unwind the agreement and refund any payments she had made once she had returned the phone. Ms F complained to our service more than six months after that, and so I cannot consider that aspect of her complaint. (I still could if the reason she complained late was the result of exceptional circumstances, but there aren't any.)

The second relevant letter was sent in June 2022. It reminded Ms F that the merchant was still waiting for the phone, and told her that as she had not been making payments, BPF had to report the arrears on her credit file. It also said that the merchant, not BPF, would be responsible for refunding her deposit. Ms F has complained too late about those points for me to consider them.

I will therefore confine this decision to the matters covered in the third letter, dated February 2023, which was about the merchant's refusal to accept the phone due to the passage of time. I think that complaint can include the fact that BPF did not treat Ms F's complaint as a claim against it under section 75.

That letter also repeated what was sent previously about Ms F's credit file, but said nothing new about it, and so that issue remains out of jurisdiction, because time runs from the second letter so far as that matter is concerned.

#### My decision about the merits of this complaint

Section 75 is a law that makes BPF jointly liable for any breach of contract by the merchant, such as a breach of the implied term that the phone will be of satisfactory quality at the point of sale, or of the express term that Ms F could return the phone for a refund if she did so within 14 days. I will deal with each of these scenarios in turn.

I have seen no evidence that the phone had anything wrong with it, and the first time that was even mentioned by Ms F appears to have been in June 2023. So I don't think BPF had any reason to consider any potential section 75 claim on that ground, either then or now.

When Ms F complained in 2023, BPF investigated again, but it says that the merchant failed to confirm that Ms F had actually visited its store in September 2021. It also did not have sight of the merchant's returns policy. It therefore concluded that there was no evidence that the merchant had breached a contractual term about returning the phone within 14 days. Considering the evidence BPF had available to it at the time, I think it was reasonable of it to decide that there was nothing else it could do to help Ms F. There seemed to be no basis for a claim under section 75, and it was too late to raise a chargeback dispute.

Since then, as I've said, Ms F has now provided evidence confirming that she did have an appointment at the merchant's store on the relevant day, and evidence of the merchant's returns policy. So I have considered whether BPF should review this case again. However, I don't think it needs to. I will explain why.

I have seen an email from Ms F to the merchant, dated 24 November 2022 – 13 months after it had agreed she could return the phone – in which she told the merchant that it had to either collect the phone from her at home, or pay her travel expenses for bringing the phone to their store. The merchant didn't have to do that, because there is nothing in its returns policy to say that it would.

At the time, BPF had no reason to get involved in that dispute, which was entirely a matter between Ms F and the merchant. Once the merchant had withdrawn its offer to take back the phone, after more than a year had passed (from October 2021 to early 2023), I think it was completely reasonable of BPF to decide that it had done all it could to help Ms F. There was nothing else it could do by then.

Now, the position has changed a little, but not enough to assist Ms F. The evidence supplied by Ms F in November 2023 shows that the merchant did indeed breach its returns policy in August and September 2021, by not letting Ms F return the phone. I agree that that was a breach of contract, but that doesn't mean that it would be fair to hold BPF responsible for that now, because of everything that has happened since – or rather, because of what *hasn't* happened since. Ms F still has not returned the phone.

The main reason that matters is because the only sensible remedy for a breach of contract, where the breach is a refusal to accept the return of an unwanted item for a refund, is to require the party in breach to accept the return of the item and to refund the purchase. (I

can't require the merchant to do that, but that remedy informs my decision about what I can fairly require BPF to do.) The merchant agreed to do that in October 2021, but Ms F didn't return the item. That isn't the merchant's fault, and so under section 75 it can't be BPF's responsibility either. It is now more than two years later, and Ms F still has the phone, and whether or not she has been using it during that time (she says not), I think it is just much too late to credibly, sensibly or fairly decide that BPF should have to do anything about it now.

So I am not minded to uphold this complaint.

### **Responses to my provisional decision**

BPF accepted my provisional decision. Ms F did not. She said I had failed to understand the right to return the product (but did not elaborate as to why). She said she had made ample effort to return the phone, by attending her appointment at the store in September 2021. She pointed out that the merchant had inconvenienced her.

Ms F asked for more time, originally because she was going away, and so the deadline for her to respond to my provisional decision was extended by two weeks. Then she asked for more time to consult with a solicitor about this case. I denied a further extension of time, because I think that this case is not so complicated that she could not reasonably respond to my provisional decision without needing to seek legal advice. The issues are straightforward. By the extended deadline, Ms F had made the points I have mentioned in the previous paragraph.

### **My findings**

I think that Ms F's right to return the phone, and the fact that the merchant unjustly refused to let her exercise that right in 2021, has now been fully established, whatever the prior history of anyone's understanding of this issue in the earlier history of this complaint. In my provisional decision, I made it quite clear that I accepted that Ms F did have the right to return the phone, and that she exercised her right within the time limit, and that she was wrongly turned away by the merchant.

In the following month, BPF persuaded the merchant to accept the return of the phone. At that stage, I think that BPF had done enough to fairly resolve the matter. It is not BPF's fault that Ms F did not return the phone during the next sixteen months, after which BPF considered that she had lost the opportunity to return it. I remain of the view that this was a reasonable approach for BPF to take, due to the passage of time. And I have seen nothing to lead me to believe that Ms F was entitled to have the merchant come to her home and collect the phone from her there, or to pay her travel expenses for her to go to the store a second time. As I said in my provisional decision, the returns policy does not say that the merchant will do either of those things.

### **My final decision**

So my decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms F to accept or reject my decision before 11 April 2024. But apart from that, this final decision brings our service's involvement in this complaint to an end.

Richard Wood  
**Ombudsman**