

The complaint

Mr M complains that Barclays Bank UK PLC trading as Barclaycard ("Barclaycard") has refused his claim under Section 75 of the Consumer Credit Act 1974, and his chargeback request.

What happened

In January 2022, Mr M used his Barclaycard credit card to book a hotel from 4-8 April 2022. He says this was initially booked for his mother and aunt and that his aunt at one point wasn't looking fit enough to travel to the hotel and that he was going to go in her place. However, Mr M couldn't go but his aunt was able to.

On 28 March 2022, the booking company wrote to Mr M's aunt saying that management had decided to close the hotel and that they would transfer them to one of their sister hotels.

Mr M complained to Barclaycard after his mother and aunt had stayed at the alternative hotel. He said the hotel didn't provide the same amenities as had been agreed with the initial hotel. Specifically, that his mother and aunt had to share a double bed rather than sleep in two twin beds, that the hotel room wasn't accessible enough for them taking into account their health, and that they had to pay for food and drink on the morning they checked out despite the booking being all-inclusive.

Barclaycard declined Mr M's claim under Section 75 of the Consumer Credit Act 1974 ("Section 75") as they felt the necessary criteria for making a claim hadn't been met. And they said they raised a claim for a chargeback but, upon review of the evidence Mr M had submitted in support of this, they didn't proceed any further. This was because they didn't agree the hotel had failed to provide the correct service. And Barclaycard said Mr M needed to raise any dissatisfaction with the hotel management, in line with the booking information that had been sent.

Mr M referred his complaint to us. Our investigator didn't recommend it should be upheld. She said Mr M hadn't met the necessary criteria for a Section 75 claim. And she said, had Barclaycard raised a chargeback, it was highly likely the booking company would have defended this as the services had been used and the hotel hadn't been made aware of any problems at the time as required under the booking company's terms and conditions.

Mr M didn't agree. He said his mother and aunt did raise concerns with the hotel staff about the room, but no other room could be found due to staff shortages, and they were advised to raise any concerns about their stay when they returned home.

Mr M asked for an ombudsman's 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.

Section 75 makes the provider of credit (Barclaycard in this case) equally liable where there is a case of misrepresentation or breach of contract by the supplier of goods or services financed by the credit. However, it will only apply when there is a direct relationship between the debtor, creditor and supplier.

The crucial thing here is whether Mr M has a contractual relationship with the supplier which received the credit card payment. From Mr M's testimony, the intention was always that his mother and aunt would be staying at the hotel and receiving their amenities. This is corroborated by the booking invoice which shows that his mother and aunt were the named parties on the booking. Although Mr M says that position nearly changed in that he was at one point going in his aunt's place because of her health, his aunt was able to still travel and stay at the hotel.

I'm satisfied from the evidence I've seen that Mr M's mother and aunt, not Mr M, were the contractual parties with the hotel. That means that any complaint about the breach of contract relating to the amenities provided and not provided by the hotel could only be made by Mr M's mother and aunt as they were the intended recipients of them. As Mr M only paid for the booking though, he wouldn't have a similar right to make such a claim.

Mr M does have a right to make a claim against the booking company but only for what they contracted to provide to him. That wouldn't extend to a claim about the quality of the amenities provided by the hotel or a change to them unless the booking company took on liability for that. I've not though seen any such liability set out within the booking company's terms and conditions.

I conclude there is no valid 'debtor-creditor-supplier' relationship between the parties in relation to the alleged breach of contract about the hotel amenities and so no right for Mr M to make a claim under section 75 for that. I also conclude that Mr M is unable to show that the booking agent breached its contract with him in respect of the booking he made and paid for.

The chargeback scheme is another way which Barclaycard might have been able to recover the funds for Mr M. They didn't though raise a chargeback because they didn't agree that the hotel had failed to provide the correct service. And they said that Mr M needed to raise any dissatisfaction with the hotel management, in line with the booking information that had been sent.

I'd consider it to be good practice for Barclaycard to raise a chargeback if it has a good chance of being successful. Here though, I don't think this would have been the case.

The booking company arranged for Mr M's mother and aunt to stay at one of the sister hotels as the hotel they were originally staying at decided to close. I note though that the alternative hotel was able to provide Mr M's mother and aunt with a room along with the normal things expected for that, such as a bathroom.

I realise Mr M's mother and aunt feel this new room was suitable because it was cramped and that it wasn't easy to use the bathroom. And that they were asked to pay for food and drink on the morning of their departure. I'm sorry to hear that this affected their stay. Their argument though is a subjective one as far as the comfort element of what they were provided against perhaps what they expected. It would be different if for example the hotel couldn't provide a bathroom or a bed or that they couldn't use any of the facilities in the room. I don't though think that's what happened from the evidence I've seen.

As far as being asked to pay for food and drink on the day of their departure, I am unclear as to whether this meant Mr M's mother and aunt paid for that or made their own arrangements. It doesn't appear though that they had to pay for this throughout their stay so I wouldn't say the services in respect of that weren't provided although I appreciate a last-minute change to that would certainly have been an inconvenience.

Bearing in mind what I've set out above, I think in all likelihood the hotel (and the booking company) would have defended the chargeback by saying they did provide the services under the booking. So, I don't find that Barclaycard acted unreasonably by not proceeding any further with the chargeback.

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 Mr M to accept or reject my decision before 13 November 2023.

Daniel Picken
Ombudsman