

The complaint

Mr T has complained that Barclays Bank UK PLC, trading as Barclaycard, unfairly turned down his claim made about something bought using his credit card.

What happened

In 2016, Mr T alongside his wife, took out a holiday club membership with a business I'll call "Business H". This was paid by Mr and Mrs H trading in an existing timeshare agreement and by Mr H making a payment of £4,495 using his Barclaycard.¹ But this credit card payment wasn't made directly to Business H, rather it went to a different business I'll call "Business F".

Mr T contacted Barclaycard to dispute the transaction as he said he was unable to book holidays from Business H as promised. In fact, the only holidays available were in Winter, which weren't suitable for Mr and Mrs T. Mr T explained what had gone wrong and said he felt the membership was mis-sold or misrepresented.

Barclaycard considered what Mr T had said and treated it as a claim made under s.75 of the Consumer Credit Act 1974 ("CCA"). It explained to Mr T that, as he paid Business F and not Business H, there weren't the right arrangements in place for the CCA to apply to this transaction. But Barclaycard also treated Mr T's claim as a complaint and explained that he could bring that complaint to our service.

Unhappy with what Barclaycard said, Mr T referred his complaint to our service. He explained in detail his concerns with Business H, reiterating what was said before, but also alleging there had been a high-pressured sale and that Business H had breached its contract with him and his wife. Additionally, Mr T said it was plain that Business F collected payment for Business H, so he thought Barclaycard should be responsible for his claim.

One of our adjudicators considered the complaint, but didn't think Barclaycard needed to do anything further. He considered the relationship between Business H and Business F and thought Business F weren't supplying any service to Mr T, so it was acting as a payment processor for Business H. The adjudicator went on to consider the substance of the claim under s.75 CCA, but didn't think there was enough to say there was a misrepresentation for which Barclaycard had to answer. He also looked at s.140A CCA, but didn't think there was enough to say there was an unfair debtor-creditor relationship arising out of the holiday club purchase. So he concluded that Barclaycard didn't need to do anything more to resolve the complaint.

Mr T didn't agree with the view and asked for the matter to be looked at again by an ombudsman, explaining in more detail the problems that he'd had with the membership.

I considered all of the evidence and arguments and, having done so, didn't think Mr T's complaint should have been upheld. But as I thought that for different reasons to our adjudicator, I issued a provisional decision setting out my thoughts and asking for any further

¹ Although the holiday club membership was in the joint names of Mr and Mrs T, as the credit card used was in Mr T's name only, the complaint is his alone to bring to our service

comments or arguments before I issued a final decision.

An extract of that provisional decision reads:

“I’ve considered all the available evidence and arguments to decide what’s fair and reasonable in the circumstances of this complaint. And when doing so, I’m required by DISP 3.6.4 R of the FCA Handbook to take into account:

“(1) relevant:

- (a) law and regulations;*
- (b) regulators’ rules, guidance and standards;*
- (c) codes of practice; and*

(2) (where appropriate) what [the ombudsman] considers to have been good industry practice at the relevant time.”

When Mr T made his complaint, he didn’t set out the legal or regulatory basis for doing so. I’m not surprised by that as I’m not aware that Mr T has any legal training, nor is he represented by a professional claims management company. Here, he said something had gone wrong with something he bought using his credit card and he thought Barclaycard was responsible for putting right any problems. Barclaycard, in turn, looked at what was being complained about and treated it as a claim made under s.75 CCA. I think that was a sensible thing for Barclaycard to do as that is the normal way a lender can be made liable for things that go wrong when something is bought with credit.

s.75(1) CCA states:

“If the debtor under a debtor-creditor-supplier agreement falling within section 12(b) or (c) has, in relation to a transaction financed by the agreement, any claim against the supplier in respect of a misrepresentation or breach of contract, he shall have a like claim against the creditor, who, with the supplier, shall accordingly be jointly and severally liable to the debtor”

s.12(b) CCA states that a debtor-creditor-supplier (“D-C-S”) agreement is a regulated consumer credit agreement being:

“a restricted-use credit agreement which falls within section 11(1)(b) and is made by the creditor under pre-existing arrangements, or in contemplation of future arrangements, between himself and the supplier”

An agreement is a s.11(1)(b) restricted-use credit agreement if it is a regulated CCA agreement used “to finance a transaction between the debtor and a person (the “supplier”) other than the creditor”.

The upshot of this is that there needs to be a D-C-S agreement in place for the lender (here Barclaycard) to be liable to the borrower (here Mr T) for the misrepresentations or breaches of contract of the supplier (here Business H). But, on the face of it, there is no such relationship as Business H wasn’t paid directly using the credit card, rather the payment was taken by Business F.

There are ways in which there can be a D-C-S agreement in place, even if the supplier isn’t paid directly using a credit card. But since our adjudicator issued their view, the law in this area has been clarified by the judgment in Steiner v. National

Westminster Bank plc [2022] EWHC 2519 (KB) ("Steiner"). Steiner considered whether there was a D-C-S agreement in circumstances where Business F took payment on a credit card in relation to the purchase of timeshare membership from a business called "C". The court considered the arrangements between the parties and concluded that, as the payment to C was made outside of the credit card network, in that instance there wasn't a D-C-S agreement in place.

The circumstances of Mr T's case are very similar. Here, the same business (Business F) took payment for Mr T's purchase of Business H holiday club membership. So, based on the judgment in Steiner, I think a court would come to a similar conclusion and say there was no D-C-S agreement in place and, so, no valid s.75 CCA claim.

Our adjudicator also considered whether there might be an unfair debtor-creditor relationship between Mr T and Barclaycard arising out of the purchase. But again, I can only consider how the agreement between Mr T and Business H affected the fairness of the debtor-creditor relationship, if there was a valid D-C-S agreement in place. And, for the same reasons, I don't think it was, nor has Mr T suggested there was an unfair relationship for any other reason.

Under the rules set out above, I must take into account the law, but come to my own determination of what is fair and reasonable in any given complaint. Here, I don't think it would be fair to make Barclaycard responsible for Business H's failures when the law doesn't impose such a liability – I can't see that Barclaycard and Business H were connected in any way nor is there any other reason to say Barclaycard should be responsible for Business H's failings.

Although I understand Mr T's concerns and I have some sympathy for the position in which he finds himself, for the reasons set out above, I can't say Barclaycard are responsible for the problems he had with Business H."

Neither Mr T, nor Barclaycard, responded to my provisional 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.

As no party has given me any further evidence or arguments to consider, I see no reason to depart from my provisional findings. So, for the reasons set out above, I don't think Barclaycard needs to do anything further to resolve this complaint.

My final decision

I don't uphold Mr T's complaint against Barclays Bank UK PLC, trading as Barclaycard.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 6 September 2023.

Mark Hutchings
Ombudsman