

The complaint

Mr B complains about the way in which Barclays Bank UK PLC (“Barclaycard”) responded to a claim he made against it under the connected lender liability provisions of section 75 of the Consumer Credit Act 1974 (“section 75”).

What happened

Mr B acquired a car through a third party hire-purchase provider “P”. He paid part of the cost using his Barclaycard credit card. Unfortunately, soon afterwards the car developed faults and attempts at rectification weren’t successful. Mr B considered the car wasn’t of satisfactory quality as required under the Consumer Rights Act 2015 (“CRA”). He sought to reject the car and recover his claimed losses by means of a breach of contract claim against P. Mr B’s claim against P has been considered under a separate decision from one of my ombudsman colleagues, and more recently by the county court.

Mr B also made a section 75 claim against Barclaycard for breach of contract, on the basis that he had a like claim as he had against P. He was dissatisfied with Barclaycard’s response, which rejected his claim. Barclaycard issued a number of responses giving different reasons for its rejection of Mr B’s claim. These included that P rather than Mr B was the legal owner of the car, that Mr B had sold back the car accepting the reduced value, that he was no longer in possession of the car, that there was no breach of contract by the supplier, and that the transaction wasn’t covered by section 75 due to the existence of the finance arrangement with P.

In response to Mr B’s subsequent complaint, Barclaycard acknowledged there’d been some shortcomings in its handling of the claim. It said it had been wrong to reject the claim on the basis the car was no longer in Mr B’s possession. It apologised and paid Mr B £25. However, it maintained its decision to reject the underlying claim, citing the previously mentioned resale as well as the outcome our service reached in respect of Mr B’s claim against P.

Our investigator didn’t think it would be appropriate for us to deal with Mr B’s complaint. She felt it was more suitable to dismiss the complaint on the basis that dealing with it would seriously impair our effective operation, given the decision we’d made in relation to the claim in Mr B’s complaint about P.

Mr B didn’t agree with this analysis. He felt there was a distinction to be drawn between the actions of Barclaycard and those of P. Mr B also questioned the finding that dealing with the complaint would seriously impair our effective operation, saying the impact on our organisation would be minimal given we’d already reached a view on the underlying subject matter.

my provisional findings

I recently issued a provisional decision setting out my findings and how I was minded to conclude the complaint was best resolved. I invited the parties to let me have any further

information or evidence, if they wished, before I finally determined the complaint. My provisional findings were, in summary:

- It wasn't appropriate for me to dismiss the complaint, notwithstanding the previous consideration of Mr B's claim against P by my ombudsman colleague and subsequently, by the court. There was sufficient distinction between that consideration and the complaint about how Barclaycard had responded to the claim;
- The transaction was covered by the provisions of section 75. Barclaycard had already recognised some shortcomings in its response to Mr B's claim. I felt there were additional problems with the way in which Barclaycard had dealt with the claim, and that its existing payment of £25 wasn't enough to address the inconvenience this had caused to Mr B. It should increase this sum to £200; and
- The court's finding was relevant to determining the extent of any liability Barclaycard might have to Mr B in respect of his breach of contract claim. It had considered whether Mr B should be entitled to recover the various aspects of his claim, and had decided that he was entitled only to some of the amount claimed. In light of this, I proposed that Barclaycard should meet the sum the court awarded, less any payment Mr B had received from P under the judgment.

Both parties responded to my provisional decision. Mr B provided a copy of the court judgment and said that it had been made on the merits of the claim, as opposed to a default judgment. Mr B added that the court had decided the deposit he'd paid represented a suitable deduction for the use he'd had of the car and had decided he wasn't entitled to receive an amount in respect of the government grant that had applied to the original contract. He said P had paid him the judgment sum in full.

In his response Mr B made a number of comments in relation to the operation of section 75, which I'll address in my findings below. In summary, he considers the claim he made under the CRA to be distinguishable from a claim under section 75, and that he should thus be able to recover the money – some £2,500 – by which he believes he remains out of pocket.

Mr B has also sought to highlight that his decision to sell back the car to the original dealer was a genuine attempt to mitigate any loss suffered, rather than acceptance of any resolution of his claim. I appreciate he has raised this in response to comments within Barclaycard's final response, rather than my provisional decision which didn't impose any limitation on these grounds.

Barclaycard acknowledged my provisional findings. It has also been informed of the additional information Mr B has provided about the court judgment and payment received. Barclaycard didn't state whether it was in agreement with my findings, but made no further submissions by the response date.

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.

Neither Barclaycard nor Mr B has sought to argue the case to dismiss the complaint and so I adopt as part of this final decision the reasoning I set out in my provisional decision for concluding that it is appropriate for me to deal with the merits of Mr B's complaint about Barclaycard.

In a similar vein, I've no reason to depart from my provisional conclusion that section 75 applies to the transaction Mr B undertook using his Barclaycard credit card. However, in light

of certain of Mr B's comments, I think it might be helpful if I explain how section 75 operates in respect of his claim.

Mr B has a claim against P in breach of contract. That claim arises primarily from the provisions of the CRA, which incorporate certain requirements – such as the requirement that goods are of satisfactory quality – into his contract with P. As that claim arises from the provisions of the CRA, other aspects such as the deduction for use that is permissible under the CRA are material considerations in determining the resolution of the claim.

Section 75 does not in itself provide that Mr B has a claim in breach of contract. Rather, it provides a mechanism by which, if Mr B has such a claim against P, then he has a like claim against Barclaycard. Having established Mr B's breach of contract claim against P relates to whether the car P supplied was of satisfactory quality, it follows that his like claim against Barclaycard relates to the same cause of action. Under section 75 Barclaycard is jointly and severally liable for that claim. But section 75 doesn't create a new or different head of claim under which Mr B might pursue his loss. It simply provides him with an additional party against whom he can pursue his original claim.

As I've noted, Mr B's breach of contract claim has been determined by a court, which granted judgment in his favour and also set out the amount it considered appropriate to settle that claim. That award might mean Mr B hasn't received back all of the money he considers he should. I understand why he feels aggrieved at this.

However, I'm not persuaded that it would be right for me to reach a finding that would effectively be saying that the court reached the wrong conclusion. Our service is an informal alternative to the court, rather than offering a form of appeal against the award made by the court in respect of Mr B's claim. I'm satisfied it's appropriate for me to accept the wisdom of the higher authority that the court represents and accept as fact that the sum Mr B should receive in settlement of his breach of contract claim is that set by the court.

Barclaycard's liability to him for that claim is therefore that amount, less any sum he has already received in satisfaction of the judgment. As Mr B has confirmed that P has already paid him the judgment sum in full, it follows that Barclaycard has no further liability under his breach of contract claim. As such, it's appropriate to remove this element from my final award.

Mr B has said he doesn't understand the statement I made in my provisional decision that "*a respondent isn't bound to agree a claim simply because it can be made.*" For clarity, this statement simply recognises the fact that a respondent to a claim is entitled to make a defence to that claim (as, indeed, I understand P did in the court proceedings). It may then, as here, fall to an arbiter or judge to decide whether that claim should succeed, and if so whether in part or in full.

I accept that Barclaycard made arguments in response to Mr B's claim that contained inaccuracies and might not have been sufficient to defend the claim in court. However, there was nothing to prevent Barclaycard from making different or stronger arguments in the event of Mr B instigating legal proceedings against it. As I set out in my provisional decision, I consider the way Barclaycard dealt with the claim fell some way short of a reasonable response, which put Mr B to greater inconvenience than its payment of £25 recognises.

I'm conscious Mr B has noted that in dealing with his complaint about P my ombudsman colleague directed a higher award than the £200 I proposed in my provisional decision. As Mr B has himself noted, however, there is a distinction to be drawn between the complaint about the way P dealt with him and the way Barclaycard did. I remain satisfied that £200 (inclusive of the £25 already paid) is a fair amount for Barclaycard to pay him in settlement of

this complaint.

My final decision

My final decision is that to settle this complaint I direct Barclays Bank UK PLC to pay Mr B a total of £200, inclusive of any amounts it has already paid him in relation to the dispute.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 9 January 2024.

Niall Taylor
Ombudsman