

## The complaint

Ms D complains about a decision taken by Barclays Bank UK PLC trading as Barclaycard to not refund a payment she made using her credit card.

## What happened

On 12 December 2022 a warrant of control (in respect of an unpaid penalty charge) was issued by the court to an applicant that I will call "T".

T appointed a company that I will call "M" to exercise its rights under the warrant dated 12 December 2022.

M successfully seized Ms D's car.

On 7 March 2023 M wrote to Ms D to say that her car would be sold at auction on 21 March 2023 unless she paid it £1,183 plus storage costs.

On 11 March 2023 Ms D paid M £1,273 to secure the return of her car, £1,183 plus £90 storage costs.

Ms D disputed the above payment with Barclaycard, who after an investigation concluded there were no grounds for a refund. However, for failing to advise Ms D in a timely manner that was the conclusion it had reached Barclaycard paid Ms D £25 compensation and refunded £68.01 in interest.

Ms D's complaint was considered by one of our investigators who came to the view that Barclaycard had done nothing wrong in coming to the conclusion there were no grounds to refund Ms D the sum she was seeking.

Ms D didn't agree with the investigator's view and so her complaint was passed to me for review and decision.

In September 2023 I 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.*

*It's clear Ms D has very strong feelings about this complaint, and I can confirm I've read and considered everything she has submitted. However, I trust that Ms D will not take the fact that my findings focus on what I consider to be the central issues, and that they are expressed in considerably less detail, as a discourtesy. The purpose of my decision isn't to address every point raised. The purpose of my decision is to set out my conclusions and reasons for reaching them.*

*I would also point out that where the information I've got is incomplete, unclear or contradictory, I've to base my decision on the balance of probabilities.*

*Ms D submits that M had no right (including a legal right) to seize her car. And had M not seized her car she wouldn't have had the need to pay M for its return or the need to raise a payment dispute with Barclaycard.*

*I need to make clear my role isn't to decide whether M had the rights to seize Ms D's car, but whether Barclaycard acted fairly and reasonably, based on what Ms D provided it, in concluding there was no grounds for a refund to be made.*

*Where a consumer raises a dispute about a transaction made on a credit card that has been authorised by them, the card provider can consider the dispute under two guises chargeback and section 75 of the Consumer Credit Act 1974. And I would expect the card provider to consider both avenues.*

#### chargeback

*The chargeback process is a way in which payment settlement disputes can be resolved between card issuers (in this case Barclaycard) and merchants (in this case M). The rules for what payments can be processed through chargeback are set by the card scheme, not Barclaycard. There are different reasons a chargeback can be processed, but unfortunately for Ms D, and despite what she says on this point, I'm satisfied there was no valid reason under the relevant scheme rules (in this case Visa) that Barclaycard could have used to raise a chargeback.*

*Furthermore, based on what Ms D has submitted to our service, I'm satisfied that even had a chargeback been attempted by Barclaycard (regardless of the reason code used) this, more likely than not, would have been defended by M to the extent that it would have been entirely reasonable for Barclaycard to have then concluded there was no reasonable prospect of success in pursuing the matter any further.*

*So, I don't think that Ms D has lost out as a result of what Barclaycard did, or didn't, do in this respect.*

#### section 75

*In summary, section 75 holds Barclaycard jointly liable (as the provider of credit) for any breach of contract or misrepresentation by M (who Ms D paid using her credit card), provided that certain conditions are met. For completeness, I'm satisfied those conditions are met here.*

*Now having considered everything Ms D has said and submitted it's my understanding that M contracted to return Ms D's car to her on payment of £1,273 and this is what it did. It's also my understanding that this is how the contract was represented to Ms D by M.*

*So, I'm not persuaded that there has been any breach of contract or misrepresentation in the particular circumstances of this case that would make Barclaycard liable to Ms D under section 75.*

*Therefore, I'm satisfied that Barclaycard did nothing wrong in concluding there were no grounds on which it should have to refund to Ms D the sum she was seeking. And this is regardless of whether Ms D might be able, through the appropriate channels and in due course, 'prove' the warrant issued to T is, for one or more reasons, invalid.*

*For the sake of completeness, I would add that I'm satisfied that Barclaycard's decision to pay £25 and to refund £68.01 in interest is as much as, if not more than, I would have awarded Ms D for what Barclaycard says was a failure on its part to advise her, in a timely manner, that it was satisfied there were no grounds for it to have to refund the sum of £1,273.*

Barclaycard responded to my provisional decision to say it had nothing further to add.

Ms D responded to my provisional decision to say that she didn't believe I had addressed or answered 28 questions and further investigation (into her complaint) was required.

### **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.

Ms D hasn't provided any material new evidence or information for my consideration. So given this and given that Barclaycard has confirmed it has nothing further to add I can confirm I see no reason to depart from my provisional findings and I now confirm them as final.

However, for the sake of completeness and clarity, I would like to make some further comments and observations. These further comments and observations don't necessarily answer all of the questions Ms D has raised in response to my provisional decision. But we are not a court and I'm not required to comment on each point or question raised or make specific determinations on every submission put forward. However, I can assure Ms D that I've considered all the questions she has raised and reconsidered everything she has previously said and submitted to our service.

- As I said in my provisional decision, and again in this final decision, I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. And where the information I've got is incomplete, unclear or contradictory, my decision is based on the balance of probabilities.
- I've not verified the warrant issued to T, nor do I need to reach a fair and reasonable finding on this case.
- I'm satisfied the car was successfully seized by M (or its agents) because if it hadn't been there would have been no need for Ms D to pay M for its return.
- I'm satisfied, based on what has been said and provided, that T appointed M to exercise its rights under the warrant.
- I'm aware of when Ms D says she received M's letter dated 7 March 2023 and what she says about the receipt, or lack of receipt, of various other letters.
- I'm satisfied that there was a contract in place, this being for the return to Ms D of her car on payment of £1,273.
- I'm satisfied that what Ms D was charged for was the return of her car.
- I'm satisfied that payment was made by Ms D for the return of her car.
- I remain of the view, based on everything that has been said and provided, that on the balance of probabilities any chargeback would have been defended by M and successfully so.
- Contracts don't need to be signed to be valid.
- I'm satisfied that Ms D has had sufficient time to provide Barclaycard with evidence in support of why she believes her section 75 claim against it should be upheld, including evidence that the warrant issued to T is invalid.

- I remain of the view, and for the reasons given in my provisional decision, that Barclaycard did nothing wrong in concluding there were no grounds on which it should have to refund to Ms D the sum she was seeking under section 75.
- My role is to decide whether Barclaycard acted fairly and reasonably in declining Ms D's request for a refund based on what it was provided with – by Ms D, M or others. And for the reasons I've given I remain of the view that decision was both fair and reasonable.

### **My final decision**

My final decision is I don't uphold this complaint.

This final decision concludes the Financial Ombudsman Service's review of this complaint. This means that we are unable to consider the complaint any further, nor enter into any correspondence about the merits of it.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms D to accept or reject my decision before 2 November 2023.

Peter Cook  
**Ombudsman**