

## **The complaint**

Mrs W complains about the way in which Barclays Bank UK PLC has responded to a claim she sought to make to recover money she paid to a third party using a card the bank issued to her. Mrs W is supported in bringing her complaint by her son, Mr W. To avoid confusion, I've referred to submissions Mr W has made on his mother's behalf as having been made by Mrs W.

## **What happened**

Mrs W paid a third party solicitor, "B" £5,100 using a Barclays visa card. The payment was in relation to legal advice to be provided to Mr W about an employment matter. She later contacted Barclays to say the legal advice was deficient. She sought a refund from the bank.

Barclays initially credited Mrs W's account but subsequently reversed this. It didn't accept Mrs W's claim. It said she'd paid using a charge card and this meant the connected lender liability provisions of section 75 of the Consumer Credit Act 1974 ("CCA") didn't apply. Barclays also said that the agreement for the legal services was between B and Mr W, rather than Mrs W.

It further concluded that there was no basis for it to pursue a refund under the chargeback scheme, as B appeared to have provided the legal services to Mr W. It suggested the matter of the quality and cost of those services was a matter best dealt with by the Legal Ombudsman. However, Barclays did acknowledge that its explanations could have been clearer and offered Mrs W £100 compensation.

Our investigator thought Barclays' position was fair in the circumstances. But Mrs W didn't agree with what the bank had said. She said she had a credit card – as borne out by what was written on the front of her card – and that her claim should therefore be considered. She has provided further documents and account statements she considers support her position. Mrs W also referenced a telephone call in which Barclays had agreed she had a credit card, and had told her that the transaction had been refunded in resolution of the dispute.

Our investigator wasn't persuaded to change his view of whether Mrs W could bring a section 75 claim against Barclays. But he did find that a recording of her conversation with the bank supported that it had given her wrong information. Barclays offered an additional £200 in recognition of the distress this had caused, but Mrs W didn't accept this and matters have been passed to me for review and determination.

## **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.

There's been a good deal of back and forth in this case about whether Barclays issued Mrs W with a credit card or a charge card. That, to my mind, isn't strictly the relevant test – a charge card is, after all, a form of running-account credit. The wording on the front of the card and other submissions from Mrs W do little more than distinguish Mrs W's card from a debit card

where payment is taken directly from her current account, or establish that the card number is within a range assigned to Barclays by the relevant card scheme (in this case, Visa).

The key question is whether rights arising under section 75 can properly be said to apply to the type of account Mrs W holds. In this respect, the relevant parts of section 75 of the CCA say:

***“75 Liability of creditor for breaches by supplier.***

*(1) 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...”*

and

*(3) Subsection (1) does not apply to a claim—*

*(a) under a non-commercial agreement,*

*(b) so far as the claim relates to any single item to which the supplier has attached a cash price not exceeding £100 or more than £30,000, or]*

*(c) under a debtor-creditor-supplier agreement for running-account credit—*

*(i) which provides for the making of payments by the debtor in relation to specified periods which, in the case of an agreement which is not secured on land, do not exceed three months, and*

*(ii) which requires that the number of payments to be made by the debtor in repayments of the whole amount of the credit provided in each such period shall not exceed one.”*

In summary then, Mrs W can only bring a claim against Barclays for B's breach of contract or misrepresentation if subsection 1 applies to the claim. And subsection 1 doesn't apply if the period of credit afforded is three months or less and the agreement requires the whole balance to be repaid each time.

That appears to me to be the nature of Mrs W's agreement with Barclays. Her account statements don't specify a minimum payment due each month other than the full balance. That is more consistent with Barclays' position that Mrs W's account is caught by the exclusion in subsection 3 than with Mrs W's position that it is not.

The fact that provision exists within the agreement for interest to apply to the debt if not repaid in full doesn't alter the fact that repayment in full is the requirement. As far as I can see, the purpose of the interest provision is to avoid the otherwise rather odd situation that if a borrower failed to comply with the requirement to repay in full, they would benefit from this by having an interest-free debt. Nor do I consider the existence of a credit limit to have a bearing on whether the account is one form of running-account credit rather than another form. The issue is not the amount of credit afforded to Mrs W, but the period and form by which she is required to repay it.

I don't doubt Mrs W's genuine belief that her account ought to be one that affords her section 75 rights. However, the information she has provided is not in my view sufficiently

persuasive for me to conclude that Barclays has wrongly declined her section 75 claim.

I recognise, of course, that the situation can hardly have been helped by the fact that in telephone conversation Barclays led Mrs W to believe she was eligible to claim and that she'd been refunded. I don't think that enables me to determine that section 75 should apply; that is a question of fact established by reference to the CCA rather than what Barclays tells a customer. And as Mrs W had already used her card to pay B some months before that conversation, she didn't act in reliance on what Barclays told her. But I don't doubt that it added to the general feeling of dissatisfaction and concern Mrs W felt when she found out what she'd been told was wrong.

#### *chargeback under the card scheme*

As I've noted, Mrs W's card is within a range assigned to Barclays through the Visa card scheme. One of the aspects of the card scheme that is unaffected by the operation of section 75 is the ability to seek to recover funds from the merchant by means of chargeback. I can see that this was an option Barclays explored, providing a temporary credit for the payment while it did so. Ultimately Barclays concluded that the nature of the dispute – the quality of the legal advice B provided – would not be an appropriate matter for resolution via chargeback.

I can understand why Barclays reached this conclusion. It seems to me quite likely that progressing a chargeback for the reasons expressed by Mrs W would simply have resulted in a defence being filed by B challenging her assertion, rather than agreeing to refund her payment. So I can't fairly say that Barclays' decision not to proceed with the chargeback put Mrs W at any material disadvantage or loss such that it should be liable to reimburse her.

I believe it's been suggested to Mrs W that she takes up the matter of the quality of legal advice she received with the Legal Ombudsman Service. As the relevant body that deals with disputes of this nature, that's the appropriate course of action.

#### **Putting things right**

I think it's right that Barclays pays Mrs W compensation for the impact of the poor explanation and misleading information it gave her. Barclays initially credited Mrs W's account with £100 in recognition of its acknowledged shortcomings. It has since told us it is willing to pay Mrs W another £200, and to extend the period over which repayment is deferred pending the outcome of the Legal Ombudsman's investigation. That seems to me a fair approach for Barclays to take in the circumstances, subject to matters being referred to the Legal Ombudsman timeously.

#### **My final decision**

My final decision is that to settle Mrs W's complaint, Barclays Bank UK PLC should take the following steps:

1. pay Mrs W £200, in addition to the £100 previously paid, in recognition of the impact of the misleading information it gave her
2. Provide Mrs W with a suitable period during which her repayment of the £5,100 transaction to B is deferred without interest, to allow sufficient time for the underlying dispute over legal advice to be determined by the Legal Ombudsman Service (or other appropriate dispute resolution method). This will require that Mrs W keeps Barclays updated with the progress of any such investigation

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs W to accept or reject my decision before 12 July 2022.

Niall Taylor  
**Ombudsman**