

The complaint

Miss S has complained about the way Barclays Bank UK PLC trading as Barclaycard dealt with a claim she'd made under section 75 of the Consumer Credit Act 1974.

What happened

The circumstances of the complaint are well known so I'm not going to go over everything again in detail. But in summary, in 2021 Miss S entered into an agreement with a home extension company I'll call "M" for a building project. The project summary Miss S entered into said the works involved building an inset dormer loft conversion. The cost included carrying out a survey; drafting plans; submitting the planning application to the local authority; producing building regulations plans and structural calculations; and arranging party wall notices to be served to adjoining owners. It said work included all structural and external construction and the cost included the supply and fit of a staircase from the 1st floor to the new level. The cost included the supply and fit of windows; electrics and plumbing; and removal of all building waste.

M said the total cost of the project was £46,200. From what I've seen, Miss S made payments to M using her Barclaycard. She paid £2,000 in June 2021 and another payment of £6,730 in November 2021.

Works were carried out, but Miss S was unhappy with the loft conversion. Miss S essentially said M didn't carry out its service with reasonable care and skill. She noticed another house on her road had a loft extension that covered the whole width of the property whereas Miss S says M told her she should apply for an inset loft conversion, which is what it put a planning application through for. Miss S liaised with M over the next few months and decided to put in a claim with Barclaycard under section 75 in January 2023.

Barclaycard declined Miss S's claim. It said the necessary conditions for a section 75 claim didn't exist because the transaction fell outside of the financial limits. Miss S didn't agree. She said the building work was carried out by a third party under an independent contract. She said her claim only related to M's planning contract which was around £13,800. She said the contract was set up in such a way that the building and planning aspects of it could be separated. She said the builder invoiced her separately and payments were made direct to the builder. She said the payments to the builder were not fixed as they were with M. And she said the builder was a third party and any builder could have been substituted.

Miss S said the impact of Barclaycard rejecting her claim meant she will be unable to pay to fix the issue left by M. She said the cost to remedy things will be at least £10,000, and that if she doesn't fix things, it will impact her investment and house value. She's also unhappy with the design of the loft conversion, and it's caused considerable distress and inconvenience.

Miss S decided to refer her complaint to our service to consider. One of our investigators looked into things but didn't uphold the complaint. She thought a chargeback wouldn't have had a reasonable prospect of success because it had been brought out of time. And she agreed the claim fell outside of the financial limits for a valid section 75 claim to be

considered. She thought the design and building work was covered by M's contract and that by entering into another contract with the builder she didn't think this affected the one with M. She said M's contract set out that M would manage the building contract on behalf of Miss S. She noted it said only M could issue an instruction to the builder, and that any disputes should be directed to M.

Miss S didn't agree. She said she didn't think this was a single item with M as defined by section 75. She questioned why there were two contracts if this was a single item, with two separate payment schedules; two invoicing processes and two receipting processes. She said her contract with M was for planning, design and project management while the contract with the builder was for the construction. She said M had gone to great lengths to set out the builder wasn't its agent, and she pointed to clauses that said the builder undertakes to complete the works and remedy any defects that may occur.

As things weren't resolved, the complaint has been passed to me to decide.

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.

I want to acknowledge I've summarised the events of the complaint. I don't intend any discourtesy by this – it just reflects the informal nature of our service. I'm required to decide matters quickly and with minimum formality. But I want to assure Miss S and Barclaycard that I've reviewed everything on file. And if I don't comment on something, it's not because I haven't considered it. It's because I've concentrated on what I think are the key issues. Our powers allow me to do this.

I first want to say I'm very sorry to hear Miss S is unhappy with the build. I appreciate it cost a significant sum, and I can't imagine how she must feel.

I take into account the relevant law. So, in this case, section 75 makes Barclaycard responsible for a breach of contract or misrepresentation by the supplier under certain conditions. I think the necessary relationships between the parties exist, but the question is whether the claim falls within the relevant financial limits.

The relevant part of section 75 says that it doesn't apply to claims *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*. Single item isn't defined in the Act.

While I appreciate Miss S doesn't agree, I think the single item here is the "project" that is best described in the project summary that I've highlighted above. It looks like Miss S contacted M so that it could arrange the whole package that would enable her to have a loft conversion. M carried out the survey; sought planning permission; and arranged for the work to be carried out. The contract with M clearly set out the total cost was £46,200. While I appreciate Miss S also entered into an independent contract with the builder, I think the contract with M defined the cost and scope of all the work to be completed. I understand it was M that arranged and managed the building contract on behalf of Miss S. This is set out in the terms of the contract. The contract with M set out Miss S was required to make payments to M and the builder in accordance with the payment instruction issued by M. And it was M that guaranteed the work once it was inspected and certified.

I do appreciate Miss S has highlighted terms in M's contract that limit its liability for certain things done by the builder. It's curious that on the one hand M seeks to limit its liability but on the other hand it guarantees the work carried out. It also says that M would ensure works are

completed if they weren't completed (or remedied if required) by the builder, if necessary, by a different contractor. If M was unfairly limiting its liability there'd be a suspicion that those terms could be classed as unfair. But the effect of that would be that the contract would be read without the unfair terms being present. So even if I were to find there were terms that were unfair in the contract, I still don't think this changes the issue with regards to the single item being the whole project.

From what I've seen, I don't think there are grounds to find the overall contract with M was put together in such a way that it was split into distinct separate contracts. And I've not been shown any legal basis for why that's wrong. While I'm sorry to hear Miss S is unhappy with the service from M, I don't find I have the grounds to show Barclaycard is liable for any alleged misrepresentation or breach of contract. So I don't think its answer was unfair.

Finally, for completeness, I also don't think there'd have been a reasonable prospect of success through chargeback. This would only have covered the amount paid using Miss S's Barclaycard, but I think the claim was raised outside of the financial limits in any event. So I don't think Barclaycard acted unfairly by not considering raising a chargeback.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss S to accept or reject my decision before 8 April 2024.

Simon Wingfield
Ombudsman