

The complaint

Mr H is complaining that Barclays Bank UK PLC trading as Barclaycard hasn't refunded an amount he paid on his credit card for a modelling shoot for his daughter. He brings the claim under Section 75 of the Consumer Credit Act 1974 (S75).

What happened

In November 2019 Mr H paid £1,515 on his Barclays credit card for a modelling contract for his daughter. He says he was promised his daughter would receive the following:

- High definition modelling photoshoot;
- A portfolio on the supplier and their sister company's website; and
- Promise of a modelling contract with the supplier's sister company.

However, Mr H later complained to the supplier that the photographs provided were of poor quality. He also said the portfolio was never uploaded onto the websites, nor did his daughter get offered a modelling contract.

Mr H says the supplier later offered to refund £740 of the contract, but Mr H didn't accept that as he didn't think £775 was a fair price for what he considered to be poor quality photos. So he contacted Barclays to dispute the transaction.

Barclays initially processed a chargeback claim, but the supplier defended the claim on the basis that Mr H's daughter had signed the contract. Barclays explained this to Mr H and also said it couldn't process a S75 claim because the contract was in his daughter's name. So it said it wasn't able to refund the amount Mr H had paid.

Mr H complained that Barclays wouldn't refund the amount he'd paid. He said he had deputyship over his daughter's affairs so he didn't think it was fair to not refund the amount paid because the contract was in his daughter's name. Barclays still didn't uphold Mr H's claim as it said the court appointed the deputyship after the contract was entered into. It also said there wasn't any evidence to support that there was a misrepresentation or breach of contract.

Mr H still didn't agree with Barclays's decision so he referred his complaint to this service for a final decision. He also stopped paying his credit card balance because he maintained he didn't owe the £1,515.

I issued a provisional decision upholding this complaint and I said the following:

"Mr H paid for his daughter's modelling contract on his Barclaycard credit card. S75 sets out that in certain circumstances, as the finance provider, Barclays is jointly liable for any breach of contract or misrepresentation by the supplier.

Further to this, section 56 of the Consumer Credit Act 1974 has the effect of making the supplier the agent of Barclays during the "antecedent negotiations" leading up to Mr H entering into the loan agreement, starting from when he and his daughter were first

approached by the supplier. Essentially, this means Barclays is responsible for the acts or omissions of the supplier in relation to the sale of the loan to Mr H. In other words, Barclays has to stand behind the things the supplier said, did, didn't say, or didn't do during the sales process.

Barclays has since agreed to refund the £1,515 Mr H has paid. And this is what I would have awarded for the supplier's misrepresentation. So I don't intend to comment any further on the merits of this complaint, other than to say I agree with what the investigator said.

In this decision, I've thought about whether Barclays should refund anything in addition to the £1,515 Mr H paid and also whether it should remove any adverse markers from his credit file. Barclays doesn't think it should have to do so because it says it was Mr H's choice to not pay his credit card bill and it says it advised him of the implications of not doing so.

I recognise Mr H didn't agree he should have to pay the £1,515, but his credit card account was a different contract to the modelling contract his daughter entered into. It wasn't Barclays who breached the terms of the contract or misrepresented it to Mr H. Mr H was contractually required to pay at least the minimum payment towards the credit card, but he didn't do so. I recognise Mr H felt strongly about what had happened, but I don't think this gave him fair grounds to choose to not pay his credit card account. I'm also conscious Mr H paid off the balance on his credit card account in December 2019 – thereby paying off the £1,515. Mr H stopped paying the card around August 2020 at which point the balance was around £1,650 which were regarding different transactions – i.e. didn't include the payment he made to the supplier.

I can see Barclays wrote to Mr H to advise him that, not paying his credit card account may result in adverse markers being placed on his credit file. Ultimately, I can't say it was unfair for Barclays to record the markers on his credit file and I can't reasonably require it to remove them.

However, as I said above, S75 gives Mr H a 'like claim' against Barclays if there has been a breach of contract or misrepresentation by the supplier. So, I must give consideration to what losses Mr H would likely be able to recover in court against the supplier when considering what the 'like claim' might look like. I'm mindful when doing this that courts don't typically tend to make awards for non-financial losses such as distress and inconvenience for breach of contract apart from in limited circumstances (which I don't think would be likely to apply here).

However, Mr H is out of pocket as a result of the supplier's breach of contract and misrepresentation. As I said above, Mr H paid off his credit card account in December 2019 so I don't think Barclays charged him interest on this transaction. I'm conscious courts typically award 8% simple interest where a consumer is out of pocket and I think that's fair in these circumstances. So I think Barclays should also pay 8% simple interest on the £1,515 he paid from the date he paid it (18 November 2019) until he gets it back.

I acknowledge Barclays comments that it asked Mr H to provide evidence the deputyship started before his daughter entered into the modelling contract. And I do agree that he could have provided this evidence sooner. However, it's doesn't make a difference to the outcome of this complaint for the reasons I've set out above. So I'm not going to comment on this further."

Barclays responded to accept my provisional decision. Mr H responded to say he accepts what I said in respect to the interest being paid. However, he said he still wanted the adverse markers removed and for Barclays to reinstate his credit card. He also said there wasn't any mention of the additional transactions incurred.

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 acknowledge Mr H's additional comments, but I've come to the same conclusion as I did in my provisional decision.

I note Mr H is unhappy I haven't required Barclays to remove the adverse markers from his credit file. But my provisional decision sets out why I haven't required it to do so. His credit card account contract was a separate contract to the one he had with the modelling company. I appreciate he didn't think he should have to pay for the modelling contract, but that didn't give him grounds to not pay his credit card bill. Further to this, as I also set out in my provisional decision, the balance on his credit card was regarding different transactions – i.e. not in respect to the modelling transaction. So the transactions on the card were unrelated to the modelling contract.

It was ultimately Mr H's decision to not pay the credit card, but in doing so he was breaching the terms of the contract he had with Barclays. So I can't say Barclays acted unfairly in reporting the missed payments on his credit file and I can't reasonably require it to remove any adverse markers. I also note Mr H wants Barclays to reinstate his credit card account, but that would be a decision for Barclays and Mr H would need to contact Barclays directly if he wants his account reinstated.

Mr H has said he's not had a response to his queries regarding transactions on his account after he paid for the modelling contract. He says he's asked Barclays a number of times what the transactions were for and what the amounts charged are, but it hasn't responded. However, I don't think this issue formed part of his complaint with Barclays. This complaint relates to Barclays' handling of Mr H's S75 complaint. Mr H will need to raise a new complaint with Barclays if he wishes to take this issue further.

My final decision

For the reasons I've set out above, it's my final decision that I uphold this complaint and require Barclays Bank UK PLC to:

1. refund the £1,515 Mr H paid for his daughter's modelling contract; and
2. pay 8% simple interest on the £1,515 he paid from the date he paid it (18 November 2019) until he gets it back*.

If Barclays thinks that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr H how much it's taken off. It should also give him a tax deduction certificate if he asks for one, so he can reclaim the tax if appropriate.

I don't award anything further.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 7 June 2022.

Guy Mitchell
Ombudsman