

The complaint

Mr N complains that the settlement offered by Barclays Bank UK PLC trading as Barclaycard in respect of a claim made under section 75 of the Consumer Credit Act 1974 was unfair.

What happened

In September 2020 Mr N purchased a used car. The car appeared to have been unused for some time, it also hadn't been serviced and didn't have a valid MOT certificate. Mr N says the car was inspected and was in a satisfactory condition.

In October 2020 Mr N booked the car in with a garage ("Garage 1") for the following work to be undertaken; a major service, cambelt change and a general inspection. Garage 1 provided Mr N with an invoice for £2,280 for carrying out the major service and cambelt change. As part of the service the garage changed various filters, oil, brake fluid and undertook work on the tensioner bearing. This invoice charged £1,266.49 for labour, £633.51 for parts and £380 for VAT. Mr N paid this invoice with the credit card he held with Barclays.

Garage 1 told Mr N that following investigations an issue with the fuel pump and HT leads had been found. Mr N agreed to further work being undertaken including the alternator being checked.

Garage 1 provided Mr N with a second invoice for £1,423.39 in November 2020. This covered work for replacing the fuel pump, HT leads and testing the alternator. The garage had reported to Mr N during this work that the alternator was faulty and that the car was smoking. It had then replaced faulty breather pipes and fitted a refurbished alternator. The garage also reported there was a lot of oil in the exhaust system and that there was a possible issue with the valve steam seal as the car continued to smoke.

However, Mr N was concerned about the standard of work undertaken at Garage 1 and although he paid the second invoice again via his credit card held with Barclays, he arranged for the car to be taken to a second garage ("Garage 2").

Garage 2 inspected the car in November 2020 and reported that there were faults with the car and that in its opinion the previous repairs had been poorly carried out. Garage 2 provided an invoice for various works it carried out totalling £8,963.67. As part of these repairs Garage 2 had removed the engine, replaced the cambelt and fitted a new fuel pump as well as carrying out various repairs to the inlet manifolds and cleaning out "*excess oil from previous service*". Garage 2 also provided Mr N with a report on what it had found when inspecting the car.

Mr N raised a dispute with Barclays for £3,703.39. He said he should be reimbursed the total amount he'd paid to Garage 1. Mr N said that the work had been substandard and amounted to a breach of contract.

Barclays attempted a chargeback but Garage 1 successfully defended that and so it raised a section 75 claim. Barclays investigated Mr N's claim and found that there had been a breach of contract in respect to the repairs to the cambelt and for the service. It offered a settlement of £1,519.78 to Mr N.

Barclays explained that this amount had been reached as it accepted the charge for labour for the service and repairs but as the parts relating to these repairs were less than £100 each then then they wouldn't be covered by section 75.

Barclays also said that Garage 1 couldn't be held responsible for the poor condition of the car prior to any of the repairs. And as investigations had been ongoing by Garage 1 into the exhaust smoke and burning oil issue before Mr N removed the car it couldn't determine what involvement, if any, Garage 1 had in contributing to issues with the car found by Garage 2.

Mr N was unhappy at the settlement offered by Barclays and complained. Barclays didn't uphold his complaint and said the settlement offered had been fair.

Mr N complained to this service. Following his complaint Barclays said that on review of the evidence it accepted on balance that the fuel pump fitted by Garage 1 had required replacing by Garage 2 when it had inspected the work. Barclays offered Mr N an additional £500 to cover that cost making a total settlement of £2,019.78.

Our investigator said that he thought the new offer from Barclays was fair. He said that there wasn't sufficient evidence to say that all the repair work carried out by Garage 1 had been substandard. He also said it was unclear whether all the work carried out by Garage 1 had been redone by Garage 2 or that Garage 1 had damaged parts of the car. Our investigator said he thought the condition of the car was relevant and since it had failed its last MOT in 2013 there was no evidence that it had been road worthy since that date.

Mr N disagreed with the view of our investigator. He said Garage 1 had damaged the gaskets while it had been investigating the reason for the car smoking. He also said a number of items fitted by Garage 1 such as the filters had all required replacing due to errors in the way Garage 1 had carried out the work.

As the parties were unable to reach an agreement the complaint was passed to me. I issued a provisional decision along the following lines.

My role was to decide whether Barclays had handled Mr N's claim fairly under both the chargeback scheme and section 75 of the Consumer Credit Act 1974 and so I looked at each in turn.

The chargeback scheme isn't enshrined in law but is a dispute resolution scheme operated by the companies which run the card networks, such as Visa and Mastercard. It has certain rules under which a request for money paid to a retailer is recalled and repaid to the consumer if for instance goods don't arrive or are faulty. Under the rules a chargeback request can be defended by the retailer and Barclays said that Garage 1 had raised an objection to the chargeback claim which the scheme provider accepted. Barclays said it wasn't appropriate to pursue the chargeback claim further in the circumstances.

In respect of chargeback the bank, here that's Barclays, has a discretion to pursue a chargeback and if it feels the chance of success is remote it isn't obliged to do so. Barclays said that Garage 1 had disputed Mr N's version of events. I thought Barclays had considered the evidence before reaching this conclusion and I thought it had acted

fairly in not pursuing the chargeback and instead looking at a claim under section 75.

Barclays then raised a claim under section 75. The general effect of section 75 of the Consumer Credit Act 1974 is that if a consumer has paid for goods or services with a credit agreement, such as a credit card, and they have a claim against the supplier of those goods or services for misrepresentation or breach of contract, they are given a like claim against the credit provider which here was Barclays.

I'd seen that under section 75, Barclays looked at evidence from both of the garages and reached a conclusion that on balance there had been a breach of contract in respect of the replacing of the cambelt and the undertaking of the major service. Barclays had offered to reimburse Mr N the cost of the labour for carrying out that work. Barclays said that the individual items replaced as part of that service couldn't be reimbursed because their individual costs were less than £100 and so these parts fell outside of section 75.

However, I disagreed with Barclays approach to the law set out in section 75. While I accepted that if the value of the goods or services were less than £100 (or more than £30,000) then a claim under section 75 can't be raised but, I didn't think that rule applied here. This was because the contract between Mr N and Garage 1 was for carrying out a major service and replacing the cambelt. As part of that major service various parts were replaced such as the oil and fuel filters and brake fluid and oil were added. The cost of these items was part of the service cost and not individual repairs. The work undertaken for major service would vary depending on the condition of the car. However, I was satisfied all the work that was shown on invoice 1 was either for replacing the cambelt or for servicing the car. Barclays had accepted this work wasn't carried out to a reasonable standard.

I thought my view was also supported that many of the components fitted by Garage 1 during that major service were later replaced by Garage 2 as set out in its invoice dated January 2021. This invoice included the oil and air filter as well as oil and brake fluid. I therefore thought that all the costs raised in the first invoice from Garage 1 and paid by Mr N should have been reimbursed to Mr N by Barclays. This amounted to £2,280.

I'd seen that Barclays had also offered an additional £500 in respect of the work that Garage 1 had undertaken to replace the fuel pump which Garage 2 later reported had been substandard. I agreed that the evidence from Garage 2 is that Garage 1 hadn't fitted the fuel pump to a reasonable competent standard and that this work would also be considered as a breach of contract.

In regard to the remaining costs charged by Garage 1 in its second invoice, I thought it was relevant to take into account the condition of the car. I'd seen that Garage 2 carried out a number of repairs amounting to £8,963.67 in total to make it roadworthy. I'd also seen that Garage 1 had been still investigating issues with the car at the time Mr N had decided to remove it from them. As the car hadn't been used on the road for a considerable period of time then I thought it was reasonable to assume many components would have deteriorated over time. I therefore thought, on the evidence that I had seen, that this car had been in a poor condition when Mr N had acquired it.

As the car hadn't been in good condition when Mr N had acquired it then I didn't think I could reasonably hold Garage 1 responsible for all the repairs that were later undertaken by Garage 2. Garage 2 appeared to have gone further in its repair work than Garage 1. Mr N said that Garage 1 had damaged the inland manifold gaskets and left the car in a worse and unsafe condition.

While I accepted Garage 1's work in some areas hadn't been up to the standard

reasonably expected from a competent garage, I couldn't say that all the work they'd undertaken when replacing the fuel pump required redoing by Garage 2. I also hadn't seen any evidence that the gaskets had been actually damaged by Garage 1. I accepted they were removed by Garage 1 with Mr N's approval when investigating the car smoking, but I thought it was possible, taking into account the condition of the car, that these might have already been faulty.

I'd seen Garage 2 had also raised an issue with excessive oil being present from the service. However, Garage 1 had been investigating issues with the oil before Mr N removed the car. I didn't have sufficient evidence to say that any issue with the oil was due to the actions of Garage 1.

Looking at the second invoice from Garage 1 that amounted to £1,423.39, I'd seen that this includes the work on the fuel pump but also other items. I hadn't seen that all this work had needed to be redone by Garage 2 when looking at their invoice. As set out above it was also clear the car was still faulty when passed to Garage 2 as Garage 1 had been actively investigating issues. I thought that Barclays' offer to reimburse £500 to reflect the work on the fuel pump was fair and reasonable in the circumstances.

I thought Barclays had acted fairly in dealing with Mr N's claim under section 75. And it had recognised and accepted there was a breach of contract in respect of some of the work undertaken to the car by Garage 1. However, I thought the application of the £100 limit for goods had been wrongly applied and that a fair reimbursement to Mr N would be £2,780. This amount covered the costs of the major service, the cambelt and the fuel pump which had been accepted weren't provided to a reasonable competent standard.

I therefore intended to partially uphold Mr N's complaint.

Barclays has accepted my provisional view. Mr N has asked that he is also reimbursed the cost of the investigation by Garage 2 that resulted in its report about the defective work carried out by Garage 1.

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.

Although both parties have accepted my provisional view, I still reviewed the evidence and my conclusions, I haven't changed my mind about partially upholding Mr N's complaint. Mr N has asked that the reimbursement from Barclays includes the cost of the report he provided from Garage 2. He says without this report he wouldn't have been able to make a claim.

While I accept that Mr N is likely to have incurred some labour costs when Garage 2 inspected the car, unfortunately from the evidence I've seen I'm not able to quantify the hours Garage 2 actually spent investigating the work that had been undertaken by Garage 1 and which was found to have been performed below standard. The invoice from Garage 2 includes 35.5 hours of labour but doesn't set out the number of hours spent for the preparation of the report only.

Mr N has provided an email from the garage that estimates around 10 hours was spent inspecting the car and removing the engine. But I'm not able to accept this estimate as the time spent investigating the cam belt, service work and fuel pump. This is because the situation is complicated by Garage 2 undertaking a detailed inspection of the car that went beyond checking the work carried out by Garage 1. It also carried out a substantial amount

of repair work that wasn't linked to the work that had been carried out by Garage 1. As set out above the car had been in a poor condition when acquired by Mr N and required investigation into a number of faults.

So, although I appreciate this will be of disappointment to Mr N, I'm not going to ask Barclays to reimburse him the cost of the report prepared by Garage 2. I don't have sufficient information to accurately calculate how much this cost and I think it would be unfair to require Barclays to reimburse an amount I can't quantify.

I'm therefore partially upholding Mr N's complaint in the same terms as set out above in my provisional decision.

Putting things right

I'm asking Barclays to do the following:

- Re-work Mr N's credit card account as if £2,780 of it had not been paid, refunding any interest and charges in respect of that amount. If this calculation results in a credit balance B needs to refund this and pay interest on it at a rate of 8% simple per year calculated from the date of said credit balance to the date of settlement'

My final decision

For the reasons set out above I'm partially upholding Mr N's complaint. I'm asking Barclays Bank UK PLC trading as Barclaycard to do the following:

- Re-work Mr N's credit card account as if £2,780 of it had not been paid, refunding any interest and charges in respect of that amount. If this calculation results in a credit balance B needs to refund this and pay interest on it at a rate of 8% simple per year calculated from the date of said credit balance to the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr N to accept or reject my decision before 17 June 2022.

Jocelyn Griffith
Ombudsman