

## The complaint

X is complaining Barclays Bank UK PLC (t/a Barclaycard) hasn't refunded an amount he paid for an excursion abroad. He brings the claim under Section 75 of the Consumer Credit Act 1974 ('Section 75').

## What happened

In February 2020 X bought a package for him, his wife and three children to attend a religious event in Saudi Arabia. The package was arranged by a travel agent – who I shall refer to as F. The total cost of the package was £27,000. X paid £100 on his Barclays credit card and paid the remaining balance by bank transfer.

However, in June 2020, F contacted X to say, due to local restrictions owing to Covid-19, the event wasn't able to go ahead. So it said the trip was cancelled. X tried to get a refund from F, but was unsuccessful. So he contacted Barclays to request it refunded the full £27,000 he paid.

Barclays responded a few months later and said it should have processed a chargeback claim when X first made the claim. And it acknowledged its delay has meant it could no longer proceed with chargeback. So it refunded the £100 he would have received under the chargeback plus a further £25 in compensation. But it said it wasn't liable for the remaining losses under Section 75 because it said X paid a third party. X didn't agree and referred his complaint to this service.

Since then, X has told us that he took F to court and the court has ordered F to refund the £27,000 paid plus legal costs. However, X has said F is having to repay this in instalments so he's still out of pocket.

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

*"X is complaining about the way Barclays handled a dispute over a payment he made to F to attend a religious event in Saudi Arabia. Where a consumer raises a dispute about a transaction made on a credit card, the card provider can consider the dispute under two guises – chargeback and Section 75 of the Consumer Credit Act ('Section 75'). I would expect the card provider to consider both avenues.*

*However, in this case Barclays has acknowledged it didn't do the chargeback claim correctly and has already refunded what X would have received had it done it correctly. So, as X has already received everything he would have got from the chargeback, I don't need to think about this any further. And, ultimately, X's dispute is in respect to the Section 75 claim.*

*X paid for the package on his Barclays credit card. Section 75 sets out that in certain circumstances, as the finance provider, Barclays is jointly liable for any breach of contract or misrepresentation by F.*

*As I said above, in order for Section 75 to apply, there are certain criteria that need to be satisfied – one of which is establishing a debtor-creditor-supplier agreement (DCS) between*

*the parties. In essence, the key here is that it's the debtor who is entitled to make a claim against the creditor, and their claim against the creditor is the same as their claim against the supplier. So, if the debtor doesn't have a claim themselves against the supplier, they can't hold the creditor liable for any breach of contract with the supplier.*

*I note Barclays doesn't think X is eligible to bring a Section 75 claim because it said he paid a third party. But X bought a packaged holiday through F. Under the Package Travel and Linked Travel Arrangements Regulations 2018 ('PTRs') F is considered to be the supplier of the contract and is responsible for its performance and is liable for any breach of contract arising from the packaged holiday contract. X paid F for the contract, so it follows that Barclays can be held jointly liable for any breach of contract or misrepresentation by F.*

*There's no dispute here that F breached the terms of the contract. The trip was cancelled and, under the terms of the contract and the PTRs, X was entitled to a full refund of what he paid. But he didn't receive it and he's lost out as a result. Section 75 sets out that Barclays is jointly liable for losses arising from the breach of contract. However, since raising the Section 75 claim, X has obtained a County Court Judgement (CCJ) against F. The effect of a CCJ is that F has a legal liability to refund the amount being claimed for and X has rights through the courts to enforce this debt.*

*I acknowledge F hasn't settled the CCJ in full as of yet. But I haven't seen anything to show that F is unable to comply with the CCJ. And X has rights through the courts to enforce this debt. So, given this, I think the CCJ means X will be refunded the cost of the flights and to require Barclays to settle this loss too under Section 75 means X is likely to be double compensated for this. So I don't think Barclays has any further liability under Section 75.*

*However, I've also thought about whether Barclays should compensate X for the way it handled the Section 75 claim. As I said above, I think it was wrong to decline the Section 75 claim. Had it not done so, X would have been refunded the full cost of the flights in October 2020 – when it declined the claim. X is, therefore, out of pocket as a result of this. So I think Barclays should pay 8% simple interest on the £26,900 he paid by bank transfer from the date it declined the Section 75 until the date of the CCJ, subject to X providing the CCJ to Barclays showing that the Court did not award 8% simple interest.*

*Further to this, had Barclays settled the Section 75 claim when it should have done, X wouldn't have felt the need to start legal proceedings. I think this has caused further unnecessary distress and inconvenience. So I think Barclays should pay £500 in compensation for this."*

X didn't accept my provisional decision. He provided copies of F's accounts which he says shows that they won't be able to settle the CCJ. He set out that the account show F has a significant overall debt which is significantly more than the amount it owes him. So he said that, to pursue the claim against F further would be a futile expense and put him more out of pocket. He believes F will be declared insolvent sooner rather than later. So he maintains that the liability to compensate him for his losses rests with the businesses jointly liable – i.e. Barclays.

Barclays accepted my provisional decision.

### **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 understand X's point of view in this matter and I do not dispute the fact that F is in financial

difficulties. However, the inescapable fact is that X has a legal document requiring F to pay X's losses. I recognise it's possible F may not be able to satisfy the CCJ. But, until such time as it's legally recognised or some other legal statement that shows that F won't comply with the CCJ I cannot require Barclays to settle this. If I was to do so, it could result in X potentially being double compensated for his losses.

I naturally wholly sympathise with X for the situation he and his family have found themselves in. But the issue for me to decide is whether I can reasonably require Barclays to settle the remaining balance and for the reasons I've set out above, I can't do so.

### **My final decision**

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

1. pay 8% simple interest on the £26,900 he paid by bank transfer from the date it declined the Section 75 until the date of the CCJ, subject to X providing the CCJ to Barclays showing that the Court did not award 8% simple interest;
2. pay £500 in compensation for the distress and inconvenience it caused in declining the Section 75 claim.

I don't intend to award anything further.

Under the rules of the Financial Ombudsman Service, I'm required to ask X to accept or reject my decision before 21 November 2022.

Guy Mitchell

**Ombudsman**