

## **The complaint**

Mrs C, a sole trader, complains that the merchant acquisition services agreement she entered into with Barclays Bank Plc (trading as Barclaycard) was mis-sold to her. She says that the salesperson assured her that the charges would be lower compared to the arrangement she had then but that turned out not to be the case.

## **What happened**

The background to the complaint is known to both parties and so I won't repeat it at length here.

Briefly, in late 2021, Mrs C was cold called by a salesperson from a company which I will refer to as 'T'. Mrs C says she was told by the salesperson that T was acting on behalf of Barclays. The salesperson provided a comparison of the charges for merchant acquisition services between her current provider and Barclays.

Following this, Mrs C switched the merchant acquiring services to Barclays. She also entered into a separate agreement with T for the provision of a payment terminal and associated services.

In early 2022, Mrs C decided to terminate this arrangement (both the agreements), as she felt that it was more expensive than her old. She first complained to T and then to Barclays that she was mis-sold the arrangement. She was also unhappy that T required her to pay a large amount to terminate their agreement and threatened her with legal action if she didn't comply.

Barclays said that, as regards the merchant acquisition services agreement, it has a referral partner relationship with T. It said that all the relevant charges were made clear in its agreement with Mrs C. It said that the rates offered would have been more competitive than the previous provider had she processed a similar volume of transactions as previously. However, since the account was opened, the merchant facility was never utilised. That resulted in minimum charges being levied which could have been avoided if the facility was in regular use.

Barclays however agreed to cancel the outstanding charges, and later agreed to refund the charges paid by Mrs C, as a gesture of goodwill.

As regards the agreement Mrs C entered into with T, Barclays said that Mrs C had a separate contractual relationship with T in relation to the terminal hire and other services provided directly by T. Therefore, if she had any complaint in relation to those services, that should be made to T. The bank however said that it liaised with T and as a result T agreed to close their account and waive all outstanding fees/arrears subject to the return of their equipment.

In effect this meant that all outstanding charges under both the agreements were cancelled. In addition, Barclays had refunded all the charges Mrs C paid (except for one month which I

will address latter). So, the only charge that was ultimately incurred by Mrs C seems to be the monthly fee of £20 plus VAT (£24 in total), which she paid to T under their agreement until the time she stopped making the payment.

One of our investigators considered Mrs C's complaint and concluded that Barclays offer to resolve the complaint was fair. He said, in summary:

- Barclays and T are separate legal entities. Barclays isn't responsible for the sale of its agreement by a third party. However, once it became aware of the complaint, it has a responsibility to treat the customer fairly. It cancelled the agreement and provided a refund which seems fair in the circumstances.
- Barclays have confirmed that whilst it has a business relationship with T, it has no control over their business. T sells its own contracts which are unregulated. That said, Barclays did use its business relationship to ask T to consider cancelling the contract, which they did.
- Overall, Barclays has done all it could to resolve the dispute.

Mrs C did not agree and so the complaint was referred to me.

### **My Provisional Decision**

I issued a provisional decision, upholding the complaint. I said:

#### *Was there a mis-sale?*

*Mrs C says that there was a mis-sale because the salesperson misrepresented the charges under the new arrangement. In particular she was unhappy with the introduction of the 'Proactive Security Service fee' after the arrangement started.*

*She told Barclays: "Barclaycard directly mis-sold "proactive security" making my acceptance of the extra charges mandatory to acceptance my PCI DSS compliance. The payments demanded by [T] / Barclaycard partnership were now much more than my previous arrangement....*

*..Surely, the Barclaycard/[T] partnership should have been aware of the possibility that "proactive security" would be an obligatory extra charge and should have raised the issue when offering their service."*

*Mrs C has provided us with a document setting out the timeline of what had happened and within it she has provided an extract of what appears to be written exchanges between her and the salesperson about various charges. Though it is an extract I have no reason to doubt its contents.*

*I can see from the extract that the salesperson, as pointed out by Barclays, relied on the information provided by Mrs C in relation to her existing merchant acquirer. I also see that the salesperson went through various charges in the charges schedule.*

*This included an item called "Proactive Security Service fee per outlet per month" with a charge of £15 plus VAT. Mrs C had only one outlet.*

*As regards this item, the salesperson said: "The proactive security fee does not apply as we have not opted for this, you are on the standard £4.80 a month."*

*Indeed, when the contract started, this was not included in Barclays' monthly invoice. However, I see that this was introduced in February 2022 and following this Mrs C sought to cancel the arrangement and complained about the fee, as mentioned above.*

*It is not entirely clear why the fee wasn't introduced at the outset but included latter. But it seems to me that the salesperson either did not adequately explain to Mrs C at the outset what the proactive security services were and the consequences of not having them or they misled her into thinking that this was not needed when it was mandatory. Either way it appears that was a mis-sale here.*

*Is Barclays responsible for the mis-sale?*

*The investigator said that Barclays isn't responsible for the mis-sale, but Mrs C doesn't agree. Her contention is that the salesperson told her that they were acting on behalf of Barclays when they sold the agreement. There wasn't anything in the documents provided to her which made it clear that Barclays wasn't responsible for any misrepresentation made by the salesperson. If anything, the documents and T's website suggest that T was acting on behalf of Barclays. As such Barclays should accept full responsibility for the actions of T.*

*The mis-sale is essentially about what was said in relation to the merchant acquisition services. So, I have reviewed the merchant acquisition services agreement to understand the role of T in relation to this.*

*This is the agreement between Mrs C and Barclays. At the top of the page the partial name of T is mentioned, together with their logo. However, the bottom of the page has information about Barclays including its regulatory details.*

*The agreement is signed by Mrs C and T's salesperson. The relevant section (which is pre-printed) says: "Signature of sales agent: For and on behalf of the Barclays".*

*I think it is reasonable for Mrs C to infer from this that the salesperson was acting as agent on behalf of Barclays in relation to this agreement, and therefore Barclays would be responsible for their actions.*

*Barclays ought to be aware of this and if that was not the intention, then I would expect it to make that very clear in the agreement. But I am unable to find anything in the application form or in the Merchant terms and conditions which explains that Barclays isn't responsible for the actions of the salesperson.*

*Towards the end of the agreement, it is stated that [T] is remunerated by Barclays for successful introduction but I don't think it sufficiently clarifies to someone like Mrs C, the relationship between Barclays and T.*

*I have also not seen any evidence to show that the salesperson made the arrangement between Barclays and T clear to Mrs C. On the contrary, from the way the salesperson explained various charges to Mrs C, I consider it reasonable for Mrs C to believe that they were acting on behalf of Barclays. For example, the salesperson said:*

*"According to your (existing provider's) statement your CNP fee is 0.30% and we charge 0.20% and therefore we are cheaper."*

*"In terms of the refund, from when I was with (existing provider) it was 50p for a refund, we charge 30p"*

*“ The chargeback charge is £9 with us and (existing provider) charge £28..”*

*“Your debit and credit card rates with (existing provider) is very high at 1.85% my debit rates are 0.32% and credit rates are 0.85%. I assure you the offer we have given you is much much cheaper.”*

*These are the charges levied by Barclays under the merchant services agreement. So, by using words such as ‘we are cheaper’ and associating themselves this way with Barclays I consider that the salesperson presented to Mrs C as if they were acting on behalf of Barclays, as claimed by Mrs C.*

*So, taking all of this into account, I am presently persuaded that Barclays should be held responsible for any mis-sale by the salesperson in relation to the merchant acquisition services agreement. I will however consider any further submissions made in this regard.*

*What would have happened if there was no mis-sale?*

*It is difficult to know what would have happened had the salesperson clearly explained the charges to Mrs C, in particular the proactive security service fee.*

*However, I see that Mrs C sought to cancel the agreement soon after this fee was introduced and as noted above, she wasn't happy about the introduction of this fee. So, I consider it more likely than not that she wouldn't have proceeded with the new arrangement and that includes the agreement she entered into with T. But that also means that it is more likely than not she would have stayed with her current provider.*

*Therefore, I have considered what would have happened in that event.*

*As I mentioned earlier, Barclays has refunded all the charges except the £38 they collected in March 2022. It looks like it was just missed when they refunded the payments up to February 2022. I asked Barclays whether they would be willing to refund this amount and they have agreed to it.*

*So, the current situation is that all charges paid by Mrs C under this arrangement has been refunded except the £24 per month she paid to T for the terminal hire and associated services. I believe she paid for 6 months (From October 2021 to March 2022). So, the total comes to £144. However, I ask Mrs C to confirm this figure.*

*Given my provisional finding that had there been no misrepresentation about the merchant acquisition services charges, Mrs C wouldn't have entered into this arrangement at all, it follows that she wouldn't have incurred this cost as well.*

*However, she would have continued to pay her previous provider during the relevant period. As mentioned earlier, during this period there was no activity. From the information provided by Mrs C, I see that there was a month immediately prior to the switch when there was no activity, and the previous provider billed her £41.80 (£34.80 plus service charges of £7) for that month. Mrs C told me that the previous provider only charged her £34.80 and that included the terminal hire charges. So, I am not clear what the service charges was.*

*Nevertheless, even if it is the case that she only paid £34.80 per month to her previous provider including the terminal hire charges, that works out to about £208 for six months as opposed to £144 she has paid to T.*

*As such Barclays' refund has put her in a slightly better position compared to where she would have been had she continued with her previous provider.*

*That said, I consider that this issue caused some distress and inconvenience to Mrs C. Given my view that she wouldn't have moved on to the new arrangement but for the mis-sale, she was put to the inconvenience of having to move to Barclays and then few months later come out of it and (perhaps) move to another provider. I can also see that she was distressed by all this. At the same time, I consider that Barclays did try to resolve the matter, as explained by the investigator.*

*Taking all of the above into account, I consider that Barclays should pay Mrs C £150 for the distress and inconvenience this matter has caused. This is in addition to the £38 Barclays has agreed to refund.*

*Finally, Mrs C thinks that her credit record may have been affected as a result of this. However, she has not provided me with any evidence to substantiate this.*

### **Response to my Provisional Decision**

Mrs C responded to clarify some points but in general accepted my decision. She also sought confirmation that the outstanding charges with T have been cancelled and not just sold to a debt collection agency by T.

Barclays did not respond.

### **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.

Having done so, I see no reason to depart from the conclusions I reached in my Provisional Decision. I remain of the view that the settlement set out in my Provisional Decision represents a fair and reasonable outcome to this complaint.

I thank Mrs C for clarifying some points in particular the various charges, though it hasn't affected the overall outcome in that Barclays' refund has put her in a slightly better position compared to where she would have been had she continued with her previous provider.

From what I have seen, the outstanding charges with T have been cancelled (as advised by Barclays) and I see that Mrs C hasn't been pursued for them since. However, if in the future Mrs C is pursued for this, she is able to raise a complaint at that time.

### **My final decision**

My final decision is that I uphold this complaint. In full and final settlement of it, Barclays Bank Plc should pay Mrs C £188.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs C to accept or reject my decision before 29 March 2024.

Raj Varadarajan  
**Ombudsman**