

The complaint

Mrs W complains about the way Barclays Bank UK PLC trading as Barclaycard ('BC') handled a claim she made to it.

What happened

The parties are familiar with the background details of this complaint – so I will briefly summarise them here. It reflects my role resolving disputes with minimum formality.

Mrs W paid for some of the cost of a second-hand car for her daughter using her BC credit card. The rest was paid for via bank transfer. However, she says there were mechanical faults with the car and the garage was unwilling to help.

Mrs W raised a claim to BC to get her money back. BC said that it was unable to raise a chargeback due to the requirement of the scheme rules not being met. It also said that the technical criteria was not in place for Mrs W to have a Section 75 claim against it.

Mrs W complained about the outcome of the claim – and escalated it to this service. Our investigator did not uphold the complaint and the matter has been referred to me for a final 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.

While I might not comment on everything (only what I consider key) this is not meant as a discourtesy to either party – it reflects my role resolving disputes with minimum formality.

I am sorry to hear about the issues with the car Mrs W helped to fund for a family member. However, it is worth noting here that BC is not the supplier of the goods. So when looking at what is fair I consider its role as a provider of financial services – and what it fairly could have done to help Mrs W with the information that was reasonably available to it at the time.

As Mrs W used a credit card to pay for the goods in dispute I consider the protections of chargeback and Section 75 of the Consumer Credit Act 1974 ('Section 75') to be particularly relevant here.

Chargeback

A chargeback is not a legal right but based on the rules of a particular card scheme. In this case it appears the card scheme is the Visa one which I have considered here in deciding what is fair.

BC did not have to raise a chargeback, but it would be considered fair to do so where the claim had a reasonable prospect of success. In this case BC says that when looking at a claim like this the requirements of the chargeback rules were not met because the goods had not been returned to the supplier. I have looked at the relevant rule here which I consider to be '*Not as described or defective merchandise/services*' and I don't consider BC is quite right in its analysis. A chargeback can be raised if goods have not been returned yet as long as there is sufficient evidence that the consumer attempted to return the goods and this was refused.

However, even if BC had raised a chargeback, I am not persuaded that the evidence presented to it at the time shows that it is more likely to have succeeded than not. It is clear that the supplier would have defended the chargeback – correspondence shows it had contested the prior claim that it was liable for the faults. And had the chargeback been pushed forward to arbitration by the card scheme it is also difficult to say that the result would have been in Mrs W's favour. I say this because the car at the time of sale was around eight years old and had travelled around 85,000 miles. The main issue appeared to be the requirement to replace the timing chain which could be put down to reasonably expected wear and tear in an older high mileage car like this one – and there was no expert report or similar evidence to persuasively show otherwise. And while it has been mentioned that there was a recall on the car – it wasn't clear if the car was actually suffering from a fault connected with this (I also note the update required appeared to have been carried out by a dealer in any event).

I also note Mrs W has submitted further evidence she says shows the car was defective at the time of sale – but my role here is to look at how BC handled the claim at the time – and this information wasn't presented then.

In summary, there wasn't persuasive evidence that the issues with the car were more than reasonably expected wear and tear at the time the claim was made. So, even if BC could have progressed a chargeback I don't consider it would have had a reasonable prospect of success in any event.

For completeness I note that our investigator pointed out that under chargeback Mrs W would not be able to recover the full price of the car in any event (and that even if the chargeback had succeeded, and the car was taken back, it might be economically worse than having the repairs carried out). Mrs W says she was under the impression she only had to put part of the cost on her card to recover the full amount. However, this does not apply to chargeback - where only the amount paid on the card can be recovered. It does apply to Section 75 – however, this claim fails for the reasons I have detailed below.

Section 75

Section 75 in certain circumstances allows Mrs W to hold BC liable for a '*like claim*' for breach of contract or misrepresentation in respect of an agreement by a supplier of goods or services which is funded by the credit card.

There are certain requirements that need to be met in order for Section 75 to apply – which relate to things like the cash price of the goods or the way payment was made. After

considering these factors I think the requirements are not in place for Mrs W to have a valid Section 75 claim against BC in respect of the agreement for the car. I will explain.

In order for Mrs W to have a Section 75 claim against BC in respect of the quality of the car she would need to be able to make said claim against the supplier in court. Essentially, she needs to have a contractual agreement with the supplier here. This is often referred to as the requirement for a valid '*Debtor-Creditor-Supplier*' agreement. In this case the key issue is whether there is the relevant agreement between Mrs W ('the Debtor') and the car garage that supplied the car ('the Supplier').

In this case it appears the contract to supply a vehicle was made with Mrs W's daughter. It is her name that appears on the written contractual agreement for the car (and she signed the customer declaration). To reinforce this I note the log book is also in her name, and she is the primary insured on the car. As an aside I also note that in her later communications with the supplier about the faults Mrs W's daughter's does not act in a way inconsistent with someone who has contracted to own the car. So prima facie, it is Mrs W's daughter who has the contractual agreement with the supplier, and the potential claim in court against it in relation to the quality of the car. Which means that Mrs W does not have a claim against the supplier – or BC under Section 75.

I know Mrs W financed the car. Unfortunately, simply paying toward a purchase does not give rise to the required contractual agreement here. And while I know Mrs W benefits from the purchase as it is used to take her to places she needs to go I don't consider this is enough to establish the required agreement for a claim against BC here. And while Mrs W's testimony is that she was the one who has a contract with the supplier – the evidence doesn't support that here.

It is also worth noting in any event, that even if a Section 75 claim were valid – for similar reasons to those I have mentioned above – I don't think the information presented at the time of the claim persuasively shows that the car was suffering from more than expected wear and tear. So BC would not necessarily be expected to agree that a breach of contract had occurred without further information.

I know my decision will come as a disappointment to Mrs W. I am also sorry to hear about the challenges she has explained with her health and that of other family members. However, I don't consider BC should fairly have to pay out to her in respect of the car.

My decision does not prevent Mrs W seeing what recourse her daughter might have in court against the supplier. But that is something she can seek independent legal advice on.

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs W to accept or reject my decision before 1 May 2025.

Mark Lancod
Ombudsman