

The complaint

Mr G complains that Barclays Bank UK PLC has not refunded him money paid with his credit card when services were not provided as agreed. The bank trades in this case under its Barclaycard brand.

What happened

Mr G's complaint arises from the way in which lawyers have handled his divorce proceedings. He says that they have not provided the services they should have provided. Because Mr G has paid for those services using his Barclaycard, he says he can bring a claim against the bank as the card provider.

Mr G's Barclaycard statements show that in October and November 2023 Mr G made three payments on his personal Barclaycard to three different lawyers. They were:

- on 16 October, a payment of £2,400 to Clerksroom Direct, which it appears enables members of the public to instruct barristers direct (rather than through a firm of solicitors);
- on 9 November, a payment of £5,400 to Julie MacDonald solicitors; and
- on 30 November, a payment of £4,800 to Curwens solicitors.

Mr G does not appear to have raised any complaint with the bank about the second of these payments, although he did comment in response to my provisional decision that £5,400 was a lot of money for a short court hearing. In respect of the first and third, however, he says that barristers were instructed only very shortly before the hearing at which they were due to represent him. They were therefore poorly prepared and he did not have effective representation.

Mr G's statement shows that the payment to Clerksroom Direct was credited to his account on 25 January 2024, re-debited on 18 March 2024 and then re-credited on 29 April 2024. He has therefore received a refund of that payment.

Mr G approached Curwens on 23 November 2023. He explained that he wanted them to appoint a barrister to represent him at a hearing on 6 December. Curwens provided Mr G with the name of a barrister who was available and whom they thought was suitable for Mr G's needs. They said his estimated fee would be £4,000 plus VAT; in addition, they required a payment on account of £1,500 plus VAT in respect of their own professional fees. Mr G paid £4,800 to Curwens using his personal Barclaycard. That represented the barrister's estimated fee. He made a separate payment to cover Curwens' own professional fees.

Curwens instructed the barrister on 5 December 2023, the day before the hearing. He conducted a telephone conference the same evening and finalised a note for the hearing. He attended the hearing on 6 December. Curwens did not attend and were never on the court record. Mr G says the hearing (which was concerned with the division of assets between him and his wife) was adjourned and that he was ordered to pay costs of £12,000. He puts this down to a lack of preparation on the part of his barrister. I note that I have not had sight of the court order or of any note of the hearing.

The following day, 7 December, the barrister's chambers submitted a fee note to Curwens for £3,850 plus VAT – slightly less than the original estimate.

Mr G complained to Curwens and then to Barclaycard. He said that the late instruction meant that he had not received the service he had paid for. Curwens explained that it could not instruct the barrister until it had received cleared funds. Because Mr G had paid by credit card (rather than, say, by bank transfer) it did not have cleared funds until a few days after payment.

Barclaycard took the view that it should not provide a refund. Mr G had not provided sufficient evidence to support either a chargeback claim or a claim under section 75 of the Consumer Credit Act ("section 75").

Mr G did not accept Barclaycard's conclusions and referred the matter to this service. One of our investigators considered what had happened but did not recommend that the complaint be upheld – for reasons similar to those relied on by the bank. Mr G did not accept the investigator's assessment and asked that an ombudsman review the case.

I did that and issued a provisional decision, in which I said:

In respect of the claim arising from the payment to Clerksroom Direct, I note that it has now been refunded. It appears that may have been done in error, but I am satisfied that Mr G is in the same position he would have been in if a successful chargeback claim had been made. I do not therefore intend to comment any further on that aspect of Mr G's complaint.

I turn therefore to the complaint arising from the payment to Curwens.

Chargeback

Where goods or services are paid for with a debit or credit card and a dispute arises, it is sometimes possible to resolve that dispute through the chargeback process. Chargeback is a scheme run by the card schemes (in this case, Visa). A card issuer (here, Barclaycard) raises a claim through the scheme against the merchant's provider of card facilities. That provider will then consider whether the claim meets the relevant criteria for chargeback (if necessary, seeking evidence from the merchant) before responding to the claim. Where necessary, the scheme provides for arbitration between the financial businesses.

Chargeback is however primarily a scheme for resolving disputes about payment settlements – including, for example, where payments are not authorised or are duplicated, or where goods or services have been paid for but not delivered. It can therefore have the effect in some cases of resolving disputes between merchants and consumers, but it is not always an appropriate or effective mechanism for achieving that aim.

There is no legal or regulatory obligation on a card issuer to pursue a chargeback claim, but this service takes the view that they should do so where there is a reasonable prospect of success. Barclaycard did not raise a chargeback here.

Mr G says it should have done so, because Curwens and the barrister did not provide the service they had agreed to provide. But that is quite clearly not the case. Curwens and the barrister between them prepared for the hearing on 6 December 2023, held a conference with Mr G ahead of it, drafted the note for the court, and the barrister attended the hearing and represented Mr G at it. It seems to me therefore that there was no reasonable prospect of achieving a successful outcome for Mr G through a chargeback claim.

Section 75

One effect of section 75 is that, subject to certain conditions, an individual who uses a credit card to pay for goods or services and who has a claim for breach of contract or misrepresentation against the supplier of those goods or services has a like claim against the credit card provider.

The supplier in this case was Curwens, who in turn engaged (and was responsible for paying) the barrister. Mr G's claim is that he did not receive the service he had paid for because Curwens did not instruct a barrister as agreed. But, for the reasons I have set out above, that is not the case. They did instruct a barrister and did work with him on the preparation for the hearing on 6 December 2023.

Curwens was however under an obligation to act with reasonable care and skill. I do not accept Mr G's argument that it was a breach of that obligation to instruct the barrister the day before the hearing. Whilst that situation is not ideal, it is certainly not uncommon. And, had the barrister felt he was not in a position to prepare properly, he would have been under a professional duty to decline the work and his chambers would have put forward someone else. Indeed, I note that Curwens had originally had a different barrister in mind, but they were unavailable.

I make no comment on the performance of the barrister at the hearing, save to note that the courts will not generally consider a claim arising from the performance of an advocate in court. To do so would run the risk of relitigating matters which a court has already decided.

It is not for me to say whether Mr G does in fact have a claim against Curwens – or indeed the barrister. Nor is it for me to decide whether he has a claim against Barclaycard under section 75. What I must do is decide what I consider to be a fair resolution of Mr G's complaint about Barclaycard's decision to decline his claim. In the circumstances, however, I think that decision was a reasonable one.

Barclaycard had nothing to add. Mr G did not accept my provisional decision. As well as commenting on the level of fees he was charged, he provided further generic information about the operation of section 75 and some comments which appeared to relate to a payment or payments which had not been made by credit card and which are not therefore directly relevant to this complaint.

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, however, I have not changed my view from that which I set out in my provisional decision.

I do not believe that Mr G's further submissions add anything here. He has asked for example why section 75 was not considered. I think it is clear however that I did consider section 75 and explained why I thought Barclaycard acted reasonably in declining Mr G's claim under it. He may not agree with my conclusions about section 75, but it is simply incorrect to suggest I did not consider it.

My final decision

For these reasons my final decision is that I do not uphold Mr G's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 8 July 2025.

Mike Ingram
Ombudsman