

complaint

Mr S complains that Barclays Bank Plc should refund the cost of his relative's surgery. He paid for the surgery using his Barclays credit card.

Mr S brings his complaint under section 75 of the Consumer Credit Act 1974 ("section 75").

background

I set out the background to this complaint in my provisional decision. I explained in that decision that I did not propose to uphold the complaint because I had reached the following conclusions:

- Section 75 provides that, under a very specific set of circumstances, a consumer may seek to recover money paid under a contract with a supplier from his or her credit card provider. There can only be a valid claim under section 75 if there is a valid debtor-creditor-supplier ("d-c-s") agreement and if it can be shown that the supplier misrepresented the contract and/or acted in breach of contract.
- I explained that to uphold this complaint I would have to be satisfied that Mr S had made the contract with the supplier as he suggested. It was clear that Mr S had paid for the surgery. But I weighed this against the fact that all the contractual documentation relating to the surgery was all in Mr S's relative's name not his. I said this in itself did not mean that there was no valid d-c-s relationship. To establish if there was any valid d-c-s chain in this case I also had to consider the wider circumstances of the complaint.
- Mr S considered it was significant that he now had possession of the medical product that had been used as part of the surgery. But I did not consider this was relevant here. Because it was Mr S's relative who had had the invasive surgery to have the medical product put into her body and who also had remedial surgery to remove the medical product - not Mr S. Mr S only took possession of the medical product once it was no longer required. In the circumstances I concluded this demonstrated that the contract with the supplier had been made between Mr S's relative and the supplier.
- For the reasons set out above I was persuaded that the contract had been made between Mr S's relative and the supplier only. It followed I concluded there was no valid d-c-s relationship in place and this meant that Barclays had no liability to Mr S under section 75.

I invited the parties to let me have any responses they wished to make to my provisional decision before I issued a final decision.

Barclays said it accepted my decision. Mr S said he did not. He considered that there was a valid d-c-s relationship. He said he had a document that he was searching for that would demonstrate this was the case. He also commented that he had taken legal advice on this point and he had been told that there was a valid d-c-s relationship in place.

my findings

I have re-considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

We have not received Mr S's document. I take on board that Mr S's legal advisor has told him that there is a valid d-c-s relationship in this case. But aside from telling us this, he has not said why so I have been unable to consider this point any further. In the circumstances I have not been persuaded by what Mr S has said in response to my provisional decision. It follows that I have reached the same conclusions for the same reasons that I reached in my provisional decision.

my final decision

My final decision is that I do not uphold this complaint.

Joyce Gordon
ombudsman