

complaint

Mr T complains that Barclays Bank Plc won't reimburse him, under section 75 of the Consumer Credit Act 1974, for the full cost of a kitchen and bathroom whose installation he paid the deposit for with his Barclaycard.

Mr T is being assisted with his complaint by Mr D, his advocate.

background

On 20 April 2016 Mr T entered into an agreement with an installation company, which I'll call "W", to supply and fit a new kitchen and bathroom. The total cost of the works was just over £25,000. W required 20% on the day the order was placed, 60% when work started and the final 20% when the work completed. Mr T made a payment of £4,904.85 using his Barclaycard on 20 April 2016.

Work was due to start on 30 May 2016, but it started late on 1 June 2016. On this day Mr T made a further payment of £9,914 being 60% of the quoted figure. This brought the total he had paid towards works to £14,818.85, leaving 20% remaining for when the work was completed.

Mr T started to experience problems with the contractors and raised his concerns with W. The project manager for the installation resigned with no replacement and, due to difficulties with deliveries of appliances and buildings works not being completed, the workmen withdrew their services. A further agreement was reached for the kitchen to be completed by 17 June 2016, but a disagreement arose over the cost and the quote. As a result, the kitchen wasn't completed and work in the bathroom wasn't even started.

Mr T appointed a second firm to complete the works, which I'll call "Q." He was informed by Q that W had changed the size of the kitchen units and gas pipes were either trapped or installed against regulations. Mr T says Q made matters worse by stealing materials and flooding a new floor. Mr T is taking legal action against Q separately.

Mr T made a section 75 claim against Barclays as he said there had been a misrepresentation with the quote and a breach of contract as the kitchen wasn't completed and the bathroom wasn't started. In all, Mr T claimed:

- £25,024.27 as the full quote for the kitchen and bathroom installation by W.
- £1,760.80 invoices paid to Q to finish the work that was supposed to be done by W.
- £640 estimated interest on the credit card.
- £984 administration costs for 29 hours and other costs including video editing.

Along with his claim, Mr T provided a video of his unfinished kitchen. Barclays said it was unable to review the video and declined the claim as no contract had been provided to show what would be included in the installation. Mr T complained about that and Barclays stood by its decision.

Barclays also wanted confirmation from a third party of the work that was outstanding and it informed Mr T that it would only be liable for the amounts actually paid, not the full £25,024.27, as that amount hadn't been paid by Mr T. It did, however, pay Mr T £25 for its delay in responding to the complaint.

Unhappy with the outcome of his s.75 claim, Mr T asked us to look into the matter. As well as the above matters we were also asked to consider an award for the distress and inconvenience caused as the unfinished work had allegedly caused Mr T to become ill.

Our investigator was able to view the video information and agreed that a breach of contract had seemingly occurred as Mr T had been left with an unfinished kitchen. In order to put that right, he said Barclays ought to arrange for the kitchen to be completed or pay a cash settlement for Mr T to arrange that himself. But he didn't think it fair to ask Barclays to cover the costs of the damage caused by the second contractor, or pay any compensation for the illness, as Barclays wasn't responsible for that.

Mr T and Mr D disagree with the outcome. In summary, they argue that:

- The investigator hasn't protected Mr T's rights under section 75 of the Consumer Credit Act 1974.
- The investigator has failed to take into account the practices of W which have directly led to Mr T's ill health.
- Mr T is entitled to the full contract amount of £25,024.27 as a 20% deposit for the work was paid for by credit card. They've drawn comparisons with another complaint decided at the ombudsman service, with similar circumstances where the lender was required to make a full payment even though only a deposit was paid by credit.

Mr T's complaint was referred to me for a decision. But before reaching that I asked Mr T for more information about the situation. I asked Mr T and Mr D to provide:

- Confirmation of the works Q were employed to complete. What work they completed, if any, and what damage they caused? I asked for a copy of the contract entered into showing the work the second contractor was asked to do in an itemised form and I needed an itemised list of what was completed, its cost and what was damaged.
- A report carried out by a qualified independent party showing what work needs to be completed to finish the kitchen to a satisfactory standard. The report needed to include what work needed completing and an estimated cost for completing it.

Mr D replied to say he didn't want to be contacted about the complaint. Mr T also replied, refusing to provide the information I asked for. In summary, he considers the request for information about Q plays no factor in the breach of contract involving W. He also won't provide the report requested as he doesn't believe he should be legally responsible for this and believes the service provider or lender ought to prove the contract has been delivered in full. He also considers such a request to be out of time and that other independent reports have been offered on three occasions but have been disregarded unfairly. He further doesn't believe the provision of a report is required by law and will only comply with this if a decision stating the legal authority for this is issued.

I issued my provisional decision on 28 February 2018. I said:

Although I have only summarised the background above, I would like to reassure both Mr T and Barclays that I have read their submissions in their entirety.

I would explain that it's not my role to replicate what a court of law would do. I'm required under the Financial Services and Markets Act 2000 to reach a fair and reasonable decision

based on the circumstances of this complaint. In doing so I am required to take into account any regulatory rules and guidance, industry good practice and any relevant law. That means I can depart from what the law would do if I consider it to be fair and reasonable to do so.

Mr T appears to be under the impression that the only remedy for a claim under section 75 of the Consumer Credit Act 1974 (the Act) is for a refund of the amount contracted to be paid, plus associated costs. However, that isn't correct. Under section 75 the Act says:

- (1) If the debtor under a debtor-creditor-supplier agreement falling within section 12(b) or (c) has, in relation to a transaction financed by the agreement, any claim against the supplier in respect of a misrepresentation or breach of contract, he shall have a like claim against the creditor who, with the supplier, shall accordingly be jointly and severally liable to the debtor.*

This means Mr T has a like claim against Barclays as he does against W for a misrepresentation or breach of contract. There is more than one remedy available to Mr T against W for not completing the installation of the kitchen and bathroom. For example, W could be made to perform the contract – that is complete the installation of the kitchen and bathroom and so this could be a like remedy against Barclays. There is nothing in section 75 of the Act that says the credit card provider is responsible for the value of the goods.

Mr T complains the quotes he received from W in June 2016 (dated 19 April 2016) were a misrepresentation of the conversation he had with W in April 2016, when he signed the order confirmation. But Mr T hasn't given details of what he thinks was misrepresented. I can see the order confirmation he signed was for the installation of a kitchen and bathroom at a total cost of £25,024.26. And the quotes he received in June set out what would be done i.e. plastering, electrics and provision of appliances etc for that cost. The kitchen was quoted at £18,024.27 and the bathroom £7,000 bringing a total cost of £25,024.27. This is 1 pence outside of the order confirmation. Based on the evidence available to me I'm not persuaded there was any misrepresentation of the goods or services that would be provided. But I don't think I need to make a firm finding about that for reasons I give below.

W did start work on the kitchen. And having reviewed the video provided by Mr T it's plausible the kitchen was only partially installed. However, given that the video is not independently corroborated – and could, for example, have been taken before the dispute arose – it's not very persuasive evidence of a breach of contract. I do understand, therefore, why Barclays sought further and better evidence (e.g. from an independent expert) before conceding liability under s.75 of the Act.

But if, for argument's sake, I give Mr T the benefit of the doubt and accept that the video fairly represents the state of works after the dispute and attempted rectification works, it would appear that W left the job part way through, with the kitchen needing further work to complete it and the bathroom having not been started at all.

If, as alleged (but not proven to the requisite standard) by Mr T, the work wasn't completed, I could accept that there has been a breach of contract by W to install a new kitchen and bathroom – the details of which were set out in the quotes and signed for on the order confirmation. This means Mr T would in principle have a like claim for breach of contract against Barclays as Mr T paid a deposit of £4,904.85 for the goods and services on his credit card.

But, it's very difficult for me to hold Barclays liable in light of Mr T's failure to co-operate or help it or us prove his claim by providing reasonable expert evidence in support – of which, see below, for more on this issue.

putting this right

Mr T has argued that he's entitled to a refund and has dismissed other remedies as not being applicable in law, such as having the kitchen completed or a cash settlement. But as explained above, a refund isn't the only possible remedy and it's for me to decide what's fair and reasonable in the circumstances of the complaint.

Mr T says Barclays should pay him £25,024.27 as the full quoted sum due for the kitchen and bathroom installation by W. In support of that he's cited our approach to another case which was reported in the media. All complaints here are considered individually; no case sets a precedent for another, legal or otherwise. Just because an award for the full cost was made in that case doesn't mean it's appropriate here. In any event, I understand from the article that that particular customer had actually paid the full cost and never had any of the work started – which is entirely different to the circumstances here.

Had Mr T paid the full amount to W then it's arguable that he would be fairly entitled to that. But he didn't, he paid a total of £14,818.85. So the most I could reasonably ask Barclays to refund would be that amount, if I found that a refund was the appropriate remedy – otherwise there would be betterment. But taking into account the circumstances of this complaint, I don't think a refund is a fair remedy.

If we accept with an independent report that Mr T's kitchen was partially completed, the limited information available on the video indicates that units and worktops were installed as were some appliances. So it does look as though part of the installation of the kitchen was completed, even if it required some snagging. So Mr T has received some of the goods and services paid for. For that reason, I'm not persuaded it would be fair for Barclays to pay Mr T a full refund of the sums paid – that would mean Mr T would receive the goods and services that were provided for free, which I don't think is fair. And if I asked Barclays to refund that, it would be entitled to the goods paid for; and I don't think it's in anyone's interests for the partially completed kitchen to be removed.

I can see Mr T provided Barclays with a list of things he believed were outstanding. But that list doesn't explain whether any of that work was started or what's needed for completion. And the list has been provided by Mr T rather than an independent expert (see above), so I don't know how accurate it is or whether someone in the industry would agree all of the work needs doing.

I did ask Mr T for an independent report from a qualified person to confirm what work was outstanding and how much it would cost to rectify it. Mr T has refused to provide this. This office is entitled to ask for information to help us discharge our duties to reach a fair a reasonable outcome for all the parties concerned. And my possible request for information is set out in the consumer factsheet 'what happens now my case has been referred to an ombudsman?' that Mr T was sent on 23 November 2017. Contrary to his further submission there was no 'promise' made that the ombudsman wouldn't ask for information. The rules under which I operate provide that I can dismiss complaints where information asked for, and which I consider to be relevant to a fair and reasonable outcome, isn't provided (see Dispute Resolution Rule 3.5.9 which says I may treat a complaint as withdrawn and cease to

consider the merits if a complainant fails to supply requested information). But in one final effort to help Mr T, I'm seeing if I can proceed without it.

The video was taken some time ago and it's not clear what the state of affairs is now. And I know that Mr T employed more contractors to finish the work W should have done (which I come on to below). So it's unclear exactly what Barclays would be responsible for, particularly as there is some indication in the papers that Mr T was considering getting in further contractors to finish the job. An independent report would have helped me to quantify any loss that Mr T had incurred. As it stands I am unable to quantify if there is any loss or what that loss is because of his refusal to provide requested information. I don't consider it to be fair to either party to 'guess' at what that loss might be or legally bind either party to compensation that might not be fair to either of them. And contrary to Mr T's argument, I can't see anywhere on the information I have available to me that independent reports have been offered on three occasions but disregarded unfairly.

Mr T also wants to be reimbursed for £1,760.80 that he paid to Q, a contractor he employed following W leaving the installation job. I asked for information about the work Q was employed to do. Mr T also refused to provide that believing it had no relevance to his contract with W. I disagree. The information provided suggests Q was employed, at least to some extent, to put right some of what was left by W. So I think Mr T's contract with Q is directly related to what Barclays might need to do to put this matter right.

Mr T says he's paid money to Q. But I don't know what he asked Q to do, whether that was something W should have done, and so something that Barclays might be liable for. Without a breakdown of what the £1,760.80 was for, proof of payment and whether it was in relation to work that was supposed to be completed by W, I'm not in a position to find Barclays is liable for those costs, let alone what the amount of that liability might be.

I'm also aware that it's alleged that Q caused damage to the property, particularly to new flooring. Barclays wouldn't be responsible for putting that right as it wasn't part of the contract with W or paid for on credit provided by Barclays. Without knowing what work Q was employed to do, or what damage it allegedly caused, I can't separate out what Barclays is actually liable for. It wouldn't be fair to require Barclays to put right anything it's not responsible for. Further, I know Mr T was considering legal action against Q. I don't know if that took place, but if it did and Mr T managed to recoup his cost then Barclays wouldn't be required to reimburse him in addition to that, as that would amount to double recovery.

I've thought about whether or not I can require Barclays to simply pay for the installation to be finished – that is, to perform the contract. But as there was damage that it wouldn't be responsible for rectifying, and as Mr T has refused to provide further information about that, I don't think that's a fair remedy either. And as mentioned above, I'm aware of the possibility that Mr T might have already had the installation completed but have no further details of that.

Mr T doesn't believe he is responsible for providing the information set out above particularly in law. I don't agree. Although as an organisation we look at things differently to a court, Mr T would be required in law to prove the losses he claims he's suffered. A defendant or respondent doesn't need to disprove allegations against him. As set out above, I'm satisfied I need this information in order to fairly decide what, if anything, Barclays needs to do to put this right. If, on reflection, Mr T is now willing to provide this information then I will be happy to reconsider this. But as it stands I'm not in a position to make any award because of Mr T's lack of evidence and/or lack of co-operation with our reasonable enquiries.

Mr T has asked for reimbursement of the interest he has been charged on his credit card. But as I'm not asking Barclays to refund the money he spent on the credit card, it follows, I won't be asking it to refund the interest either.

Mr T also asks for £984 in administration costs and other costs including video editing. This office doesn't usually award costs but we might think it fair if the complainant had to incur them to make their complaint. I don't consider it was necessary to make a video in order to make a section 75 claim against Barclays. And I don't know what administration Mr T is referring to but we don't award costs for having to call a business or write letters of complaint etc as this is all part and parcel of making a complaint. If Mr T still thinks he should be reimbursed for administration costs then I will need a breakdown of what those costs were and why they were necessarily and reasonably incurred in order to decide whether Barclays needs to reimburse him.

Finally, Mr T has asked to be compensated for the distress and inconvenience he's been caused by W not completing the installation as agreed. As set out above, Barclays can be held equally liable for any misrepresentation or breach of contract. Section 75 makes no reference to distress or inconvenience caused by the supplier; and damages for distress and inconvenience are normally only awarded in law for breaches of contracts for pleasure or peace of mind (e.g. a holiday). As s.75 deals with like claims against creditors, I won't be asking Barclays to pay compensation for that.

I've also thought about whether Barclays ought to pay compensation to Mr T for the way it handled his section 75 claim. Although Mr T was unhappy that Barclays refused to review the video, I don't think it was wrong to do so if it doesn't have facilities to watch it, especially as a homemade video isn't very weighty evidence compared with an independent expert report. Barclays also asked for the same information I have to consider any losses. Again, I don't think it was wrong to ask for this. So having considered this I don't think an award is warranted.

summary

I have currently found that there may have been a breach of contract by W in not completing the installation of the kitchen and bathroom, albeit the evidence of this is neither very persuasive nor independent. Mr T hasn't provided the information I asked for in order to establish liability and the extent of his alleged loss. Because of that, I'm not in a position to make an award against Barclays.

If Mr T would now like to provide the information asked for within a mutually-acceptable deadline, then I would be happy to consider this further. Alternatively, if he has had the kitchen and bathroom installation completed then I'm happy to consider evidence showing what work was done, and the associated cost alongside the evidence I asked for about Q.

Barclays confirmed it had nothing further to add to my provisional findings. Mr T got in touch on 7 March 2018 to request an extension to 9 April 2018. This was granted. Mr T then got in touch again on 9 April 2018 to ask for a further 4 week extension. This was also granted to 7 May 2018 but Mr T was informed no further extension would be granted without evidence of why a response couldn't be provided by the deadline given. Separately, Mr D also told us that Mr T should be able to provide a response starting from 16 April 2018.

Mr T replied late, reaching us on 9 May 2018. Much of what Mr T said centred around his perceived failings by us as an organisation and in our processes and procedures. In relation to the outcome and merits of his complaint, Mr T, in summary said:

- I did not fulfil my obligations as an ombudsman especially by stating I was entitled to step away from the law. He also says I have misinterpreted section 75 as part my explanations.
- Mr T asked for a face to face interview with me.
- He may be able to provide an expert report which will come at an expense, costs which he wanted confirmed would be reimbursed by Barclays. And it will only be provided if the proposal put forward by Barclays will be fully met.
- That is the only award Mr T is prepared to consider and the provisional decision has shown no intention to take care of his welfare as an injured customer.
- The ombudsman is treating the s75 claim as a repair under an insurance scheme.
- The workman withdrew their services mainly due to not being paid by W.
- The costs in the quote weren't credible and was exaggerated.

I treated Mr T's request for a face to face interview as a hearing request. I explained I was satisfied I could decide his complaint on the papers before me and so declined that request. I also issued directions to Mr T to confirm commission of an independent report by 28 May 2018 and for the report to reach me by 5pm on 14 June 2018.

Mr D explained he was still acting as Mr T's advocate in this matter. He said a letter would be sent by 28 May 2018. Mr T also confirmed likewise. But Mr T didn't provide confirmation the commission of a report had been accepted as I requested. Instead Mr T made further comments about how our investigations into his complaint had been conducted. He also confirmed he would provide the report but placed conditions on it that the offer previously made by Barclays was the only end result to be considered. I wrote to Mr T on 30 May 2018 responding to the points made, particularly setting out that Barclays didn't make an offer and Mr T didn't accept it in any event. I explained I wasn't bound by any previous offer that wasn't accepted and reminded Mr T he had until 14 June 2018 to provide the independent report.

Although we have received further correspondence from Mr D no report has been received.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

The Dispute Resolution Rules under which I operate provide that I may fix or extend time limits for any aspect of the consideration of a complaint by this office (DISP 3.5.13R). They also provide that if a complainant fails to comply with a time limit, I can proceed to consider the complaint or I can treat the complaint as withdrawn (DISP 3.5.15R).

And in my correspondence with Mr T I've explained which parts of the Financial Services and Markets Act 2000 provide for me to reach a fair and reasonable decision (taking account of the law, regulations and good industry practice). I don't consider it necessary to repeat that information again here.

Mr T didn't reply to my provisional decision within the extended deadline set. And although there has been further correspondence between myself and Mr T and Mr D, I've not had a

copy of the independent report Mr T said he would obtain. Of course, it was for Mr T to decide not to provide a report, particularly once I explained I didn't accept any of the conditions he placed on obtaining it. But as Mr T hasn't complied with the directions I issued it's open to me to decide whether to proceed with the complaint or to treat it as withdrawn.

I've already issued a provisional decision on this complaint and so I have decided to proceed with my consideration of this complaint as the rules permit me to do. But without any new evidence or arguments to consider, or the information I asked for provided, I see no reason to depart from my provisional findings.

Mr T did explain the workmen withdrew their services because, in the main, they weren't getting paid. But that makes no difference to the outcome of my findings; it has no bearing on whether there is sufficient evidence of a breach of contract or misrepresentation, or to what extent Barclays is, if at all, liable under s.75. And considering asking Barclays to perform the contract isn't me treating the s.75 claim as an insurance scheme, but considering if one of the possible remedies for s.75 is appropriate.

Mr T has provided some clarification around why he believes the quote to be misrepresented. But this centres around his belief that the figures were exaggerated and weren't credible. Whilst this does provide further explanation, the quote was what W were charging for the job, and I've seen no evidence that Mr T was charged something different or the goods weren't what he was told he would get. And Mr T hasn't provided any supporting evidence that the quote was exaggerated.

Mr T has also said I've shown no intention to take care of his welfare as an injured customer. My role is to independently and impartially decide what is fair and reasonable in the circumstances of complaints referred to me. I don't act for either party in a dispute.

my final decision

For the reasons given above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 26 July 2018.

Claire Hopkins
ombudsman