

## **complaint**

Mr N complains that Barclays Bank Plc should refund the cost of his partner's surgery, together with associated costs and his loss of earnings. He also complains that Barclays should make a goodwill payment to him and compensate him for the distress and inconvenience he has experienced.

Mr N paid for the surgery using his Barclays credit card. He 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, in which I explained that I intended to uphold this complaint in part because I had reached the following conclusions:

- At the heart of this complaint was whether there was a valid debtor- creditor- supplier ("d-c-s") relationship in place as Barclays was only liable under section 75 if this relationship existed. Barclays' very strong stance was that there was no valid d-c-s relationship because it considered the contract was made between Mr N's partner - Miss V and the supplier only.
- But I disagreed with Barclays' analysis of the contractual situation. I considered that, on the basis of the contractual documents and the wider circumstances of the case, Mr N had made the contract with the supplier. It followed I was also satisfied that there was a valid d-c-s relationship.
- I next turned to the question of breach of contract. I considered that, in the circumstances, the goods were not of satisfactory quality because they contained inappropriate materials and, as a result, were more likely to malfunction. Therefore, there had been a breach of contract for which Barclays was liable under section 75.
- On this basis I said I proposed that Barclays should pay Mr N £6,250 to remedy the breach and £100 for his reasonable costs.

I asked the parties to let me have any responses they wanted me to consider before I made my final decision.

Mr N commented that he could not accept my final decision - even though he agreed with the majority of it. He explained that because of his family circumstances when Miss V has the operation he will have to take unpaid time off work. He said he could not afford to lose this money. Therefore he asked that I make an award for this.

Barclays rejected my provisional decision in its entirety. It said it was clear that given the wording of the contractual documents that the contract had been made only with the patient. It said this was perfectly understandable given the personal nature of the services supplied. It described Mr N's role as merely discharging Miss V's obligation to pay under the contract. It did not consider that the wider circumstances of the case supported the contention that Mr N made the contract. It said the supplier did not consider it made the contract with Mr N as it wrote to Miss V not him after the operation.

## **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.

### *there is a valid d-c-s relationship*

I have very carefully read again the contractual documents. It is clear that they refer to the services being supplied to the patient as Barclays suggest. But I do not consider that just because the services were being provided to a third party (Miss V) this means that the third party was necessarily the contracting party.

I consider that it is significant that Mr N, not Miss V, signed the booking confirmation schedule. Further, I consider that the wording of that document makes it clear by so doing, he was agreeing to make a payment in his own right as a contracting party, rather than on behalf of Miss V.

The wider circumstances of the case, which I described in great detail in the provisional decision and I will not therefore repeat here, are also consistent with the above analysis.

It is correct that the supplier did write to Miss V sometime after the operation. But I consider it did this as it was merely giving factual information to the patient rather than pursuing its rights under the contract. In the very particular circumstances of the case, I am satisfied that if there had been a dispute about the contract between the parties, then the supplier would have pursued Mr N not Miss V despite the letter it sent to Miss V.

Barclays have asked me to decide this case in strict accordance with section 75. But what it means by this is that I should analyse the facts of this case exactly as it chooses to do - which I do not accept.

For these reasons I am satisfied that Mr N was the contracting party. There is a valid d-c-s relationship and therefore Barclays is liable to Mr N under section 75.

### *there has been a breach of contract and Barclays should compensate Mr N for this*

The information I have seen demonstrates that the goods supplied were not of satisfactory quality. They contained inappropriate materials which meant that they were more likely to burst. I am satisfied that Barclays is liable under section 75 for this breach of contract.

I consider that Barclays should remedy the breach. Mr N has given us two quotes for the remedial work. On this basis I consider that Barclays should pay £6,250 - the midpoint of the two quotes.

Mr N also asks for compensation for his time off work. I recognise that he and Miss V have a challenging family situation. But I do not consider Barclays should compensate him as he suggests. I consider that whether there had been a breach of contract or not Miss V might always have needed time to recuperate. It is a matter for Mr N if he decides that this means he will need to take time off work to help her. I cannot fairly ask Barclays to compensate him for this. But I do consider it should compensate him for the costs he has incurred. Based on the information I have available to me I consider £100 to be appropriate compensation for this.

I recognise that both Mr N and Miss V are extremely anxious about this whole situation. This is very understandable. I hope that their minds will be put at rest now they have the funds to proceed with the remedial operation.

*implications of accepting my award*

I must remind Mr N of the implications of accepting my award.

The Financial Ombudsman Service is an informal dispute-resolution service, and we do not have the same process and procedures as the courts.

There is also a limit of £150,000 on the amount of any binding award that this service can make. I am of the view that the courts would be better placed to consider any personal injury matters that may arise from the surgery and the breach of contract - due to the complex nature of the claim and also given the monetary limit on the amount of our binding awards.

In view of that, my investigation of Mr N's complaint and this final decision has only considered whether Barclays is responsible for covering the cost of replacing the medical products - and does not include any consideration of any personal injury claim.

It is important that I tell Mr N that as I propose to uphold his complaint, my award would be in full settlement of his complaint against Barclays. This means that, if Mr N accepted my award, he would not be able to bring any further claim that he may have against Barclays.

It is very important that Mr N considers the potential consequences of deciding to accept the award in full and final settlement of his complaint. If Mr N is unsure about the effect this may have on his legal rights, he may wish to seek independent legal advice before accepting my final decision.

**my final decision**

My final decision is that that Barclays Bank Plc should pay Mr N:

- £6,250 being the mid-point between the two estimates of the cost for the remedial surgery that Mr N has provided.
- £100 to compensate Mr N for his reasonable costs.

Barclays Bank Plc must pay the total compensation within 28 days of the date on which Mr N accepts my final decision. If it pays later than this:

- It must also pay interest on the compensation from the date of the final decision until the date of payment at the rate of 8% per year simple.
- If it considers it is legally required to deduct income tax from that interest, it must send a tax deduction certificate with the payment so that Mr N can reclaim the tax if he is able to.

Joyce Gordon  
**ombudsman**