

complaint

Mr P is complaining that Barclays Bank Plc hasn't refunded the amount he paid for three mobile phones. Mr P brings this complaint against Barclays relying, in part, on the provisions of section 75 of the Consumer Credit Act 1974.

background

In November 2013 Mr P agreed to buy three mobile phones through a phone shop ('U'). He paid around £2,600 for all three phones. And he paid around £600 on his credit card and around £2,000 in cash.

However, the phones soon became out of stock so U said it could no longer supply them and it said it would issue a refund. But Mr P says that he didn't receive that. Mr P contacted Barclays in 2014 and 2015 asking it to recover the money for him. But it appears it didn't do so.

In 2018 Mr P contacted Barclays again to ask it to recover the money from U. But Barclays initially said that it couldn't do so because too long had passed. Mr P complained about this and Barclays responded to say that it couldn't do a chargeback request – i.e. recover the money from U. But it said that Mr P could make a claim under S75 of the Consumer Credit Act 1974 (S75). But it said that it thought Mr P had only bought one phone on his credit card. And he'd bought the other two phones with cash. So it said that it was only required to refund the amount he paid for the phone with the credit card. So it agreed to refund that.

Mr P didn't agree with Barclays. He said that he had a letter from U which said that he paid a deposit on the credit card. So he thinks S75 requires Barclays to refund everything he paid U.

I issued a provisional decision upholding this complaint. I thought it appeared that Mr P initially contacted Barclays to ask it to recover the money he paid for the phone on his credit card from Barclays in 2014. But Barclays didn't do so. I said that under the 'chargeback' scheme, in certain circumstances, Barclays can look to reclaim the money that a cardholder paid on their credit card. But I explained that the request needs to be made within certain timeframes. I thought it appeared that Mr P made this request out of time. So I understood why Barclays didn't recover this money for him at the time. However, I did think it should have considered its responsibilities under S75.

Mr P bought three phones through U and he paid around £600 on his Barclays credit card. And I said S75 says that in certain circumstances Barclays is equally responsible for any breach of contract by U.

I didn't think it was in dispute that U didn't supply the mobile phones that Mr P paid for. And I said Barclays had accepted that he didn't receive the money back. I thought the issue for me to decide was whether Barclays had to refund the cost of all the phones Mr P paid for, or just the one it has offered to refund.

I thought the key issue here is whether Mr P entered into one contract with U to buy three phones, or three separate contracts. I thought he only entered into one contract.

U only provided one invoice for all three phones. I've looked at the invoice for the three phones and while they're each individually priced, the invoice says that the total transaction

amount was £2,596.93. And it says the total transaction deposit was £599.95 with the outstanding cash payment to be made of around £2,000.

I don't dispute that the amount Mr P paid on his credit card was the same amount as the cost of one of the phones. But I understood that Mr P went to U with the intention of buying two phones and brought enough money for that with him. But during the sales process he agreed to buy a third phone. It appears that he didn't have enough cash with him to pay for all the phones, which is why he used his credit card to pay the additional £600. But I didn't think this means that there was a separate contract to buy the third phone. So it seemed to me that there was only one contract.

I said under the terms of the contract U had agreed to provide Mr P with three separate phones. But U didn't provide any of the goods under the contract. So I thought it was in breach of the contract.

I explained that S75 says Barclays is equally responsible to compensate Mr P for U's breach of contract and I said this is irrespective of how much he paid towards the contract on his credit card. As U didn't provide any of the phones or refund the amount Mr P paid, I thought Barclays should refund the total amount he paid for the phones – £2,596.93.

I said Mr P had been out of pocket as a result of the breach, so I thought Barclays should pay 8% simple interest pa from the date Mr P paid in cash towards the contract from 10 November 2013 until he gets it back. I said it should also reconstruct his credit card account as if he didn't make the payment he made on his credit card. If, after doing so, Mr P is out of pocket at any time, I said it should pay 8% simple interest on this amount from when he was first out of pocket until he gets it back.

Mr P partially accepted my provisional decision. But he said that Barclays had caused him a significant amount of distress and inconvenience from the way that it handled his S75 claim. It had said for years that he wasn't entitled to claim for all the phones. He said that Barclays was aware that he suffers from ill health and mental health issues. And he thinks it relied on this to its advantage. He says that he's had to spend a significant amount of time on the telephone dealing with this matter. And he thinks Barclays should compensate him for this.

Barclays also didn't accept my provisional decision. It maintained that there was no cover under S75 for the cash transactions. It said that the way the items are listed on the till receipt are as individual 'single' unlinked items. It said the goods bought on the credit card was one phone. It said that one phone was paid for in full on the card, so it thinks the contract made with the merchant was to provide that phone for the total cost paid on the card.

It said that there were separate contracts to pay for the phones in cash, so it doesn't think S75 applies to those phones. It also says that they're not consequential losses either. It accepts that it's one invoice, but it says this doesn't mean it's one contract agreement for all three items.

my findings

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

I've come to the same conclusion as I did in my provisional decision and I'll now explain why.

I've taken Barclays's comments into account that it maintains that it's not one contract. But I don't think it's given anything that changes my original contract. Mr P went into U with the intention to buy two phones and had enough cash with him to do so. He subsequently decided to buy a third phone – i.e. he agreed with U that it would provide him three phones and paid money towards this.

In assessing whether it's one contract for three phones or three separate contracts per phone, I have to take into account the specific wording of the invoice which forms the basis of the contract(s) between Mr P and U. I also haven't seen anything to show that there was an intention to create three separate contracts. It seems to me that, given there's one invoice, the intention of both parties was to create one contract to supply three phones.

The invoice gives a total price payable under the invoice of £2,596.93. And it says the total transaction deposit was £599.95 with the outstanding cash payment to be made of around £2,000. I still think the invoice suggests that it was one contract to supply three phones and I haven't seen anything to say otherwise.

I note Mr P's comments that he thinks Barclays should pay him compensation. But I still think the full refund of the total cost of all the goods plus 8% simple interest is fair redress in this case given what's happened.

my final decision

For the reasons I've set out above, it's my final decision that I uphold this complaint. And I require Barclays Bank Plc to:

1. pay Mr P £2,596.93 as the total cost he paid towards the three phones;
2. pay 8% simple interest pa from the date Mr P paid in cash towards the contract from 10 November 2013 until he gets it back*;
3. reconstruct his credit card account as if he didn't make the payment he made on his credit card. If, after doing so, Mr P is out of pocket at any time, it should pay 8% simple interest on this amount from when he was first out of pocket until he gets it back.*

* HM Revenue & Customs requires Barclays to deduct basic rate tax from this simple interest. But it should give Mr P a certificate showing how much it's taken off if he asks for one.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 28 February 2019.

Guy Mitchell
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