

## **complaint**

Mr W complains that Barclays Bank plc hasn't assisted him in recovering money he paid to a third party using his debit card. He is in dispute with the third party over the goods.

## **background**

Mr W bought a car from A, a third party trader. He paid a deposit of £400 with his debit card. Mr W says as part of the deal, A agreed to undertake some remedial work to the car, to rectify a number of faults. It also arranged road tax. But when Mr W went to pick up the car, he noted that the passenger airbag had been disabled. He says this rendered the car unsafe and possibly uninsurable. Mr W attempted to negotiate a reduced purchase price or a refund of his deposit. A wouldn't agree to either of these things.

Mr W refused to accept delivery of the car, which he says A has since sold on. He approached Barclays for assistance in recovering his money through the chargeback process. But the bank said it couldn't help, as its approach to A's bank had been unsuccessful. Mr W didn't feel Barclays had done anything to assist him. He said he'd provided evidence that A hadn't provided goods (the car). And he'd paid his deposit based on the car's condition when he first inspected it. A had later disabled the airbag, so the goods were 'not as described'. This was a clear case of misrepresentation and fraud by A.

## *my provisional findings*

I issued my provisional decision on 31 January 2014. In it, I set out why I wasn't minded to uphold Mr W's complaint. I said:

- As a matter of good practice, a card issuer should attempt to chargeback if a consumer has challenged a transaction and – taking account of the relevant card scheme rules<sup>1</sup> – there appears on the face of it to be a fair chance that a chargeback request may succeed. But there was no guarantee a claim will be successful. It remains possible for the merchant's bank to defend a chargeback by reference to the same rules;
- There was little prospect of a successful claim that A didn't provide the car to Mr W. A seemed to have been willing to do so. It was Mr W who didn't want to accept it. So any claim Barclays submitted in that respect would most likely have been successfully defended as being invalid under the card scheme rules; and
- I wasn't persuaded that the deactivated airbag was evidence it – or the car itself was defective. Nor was there sufficient evidence that the car was not as described at point of sale. Indeed, there was very little evidence of how the car was described. The airbag might have been deactivated before Mr W first inspected the car, or before he went to complete the purchase. I couldn't establish that from the evidence available to me. So I could understand why Barclays might have thought Mr W's claim would also be unsuccessful. A's bank could simply argue the airbag was deactivated when Mr W first saw the car.

I invited the parties to let me have any further information or evidence, if they wished, before I finally determined the complaint.

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<sup>1</sup> The relevant card scheme rules in this case are the Visa Europe Operating Regulations

## **my findings**

Having allowed both parties the opportunity to respond to my provisional findings, I've reconsidered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Barclays didn't have anything to add to my provisional decision. But Mr W responded to say that:

- The car's airbag wasn't disconnected when he entered into the contract. The warning lights on the dashboard (apart from the handbrake light) were functioning correctly. If they weren't functioning correctly, this would have been an additional remedial action on the invoice;
- Prior to Mr W taking delivery, A told him it had disabled the airbag to rectify the fault with the handbrake warning light (which was listed in the remedial work). It was at this point Mr W queried the roadworthiness of the vehicle. The cost of rectifying the problem would have been greater than the value of the vehicle; and
- The £400 deposit included £200 for road tax. As Mr W didn't take delivery of the vehicle, the road tax portion would belong to him. However, A didn't refund this. Nor had he seen any evidence from A disputing his claim. A had entered into a contract to sell the car and would need to fulfil its part of the contract by keeping the car until A and Mr W could reach an agreeable outcome, but hadn't done so.

I acknowledge what Mr W has said in response to my provisional decision. He clearly considers he has grounds for dispute with A over the car, both in terms of quality and over what A did with the car and his deposit after he decided not to proceed. But my role here is to determine whether Barclays was wrong not to instigate the chargeback process, rather than decide the issues between Mr W and A.

As I said in my provisional decision, based on the information Mr W had told Barclays when he asked it to assist him, I could see why the bank thought the claim might not succeed. While Mr W has now provided further background, that doesn't change what he said to the bank at the material time.

And there remains the difficulty of testing Mr W's evidence, given the absence of the car. The only conclusion I could reach in this respect is in relation to the deposit. The invoice doesn't support that Mr W paid £200 for a deposit and £200 for road tax. It simply states the overall price of the car (including road tax), and that he paid a non-refundable deposit of £400.

Having considered all that's been said, I see no reason to depart from the conclusions I reached in my provisional decision. I realise this means Mr W may have to take action against A to recover the money instead of doing so through the chargeback process. But for the reasons I've explained, I can't rightly hold Barclays liable to reimburse Mr W, or pay him compensation for the inconvenience he might experience in doing so.

## **my final decision**

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

Niall Taylor  
**ombudsman**