

complaint

Mrs E complains about a car purchased using her credit card. The complaint is brought against Barclays Bank Plc under section 75 of the Consumer Credit Act 1974.

background

Mrs E raised a section 75 claim against Barclays for breach of contract and misrepresentation in respect of the car purchased on her credit card. In summary, she complains that the car lost power and fumes were coming from it.

Barclays refused to uphold her complaint. In summary, it said there was no valid 'debtor-creditor-supplier' relationship for a section 75 claim.

Our adjudicator did not recommend this complaint be upheld. In summary, she said that because the contract for the car was made with Mrs E's husband but the credit card account is Mrs E's there was not the correct 'debtor-creditor-supplier' relationship for a valid claim under section 75.

Mrs E disagreed with the adjudicator's view. In summary she says that there is clearly an agreement between her and the vehicle supplier as she intended to create legal relations. Although her husband may have been intended as the primary user of the car, she would still be able to derive a direct benefit by using it – therefore, there is valid consideration and a valid contract. She adds that the car was bought as a family car for her to use and she negotiated the price, closed the deal with the supplier and authorised the payment on her card. And her husband was on the registration documents and insurance as he was the main driver, and because she had a comprehensive insurance policy already.

my findings

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

Section 75 makes the provider of credit (Barclays in this case) equally liable where there is a case of misrepresentation or breach of contract by the supplier of goods or services financed by the credit. However, it will only apply when there is a direct relationship between the debtor, creditor and supplier.

It is Mrs E who is considered to be the debtor in this instance as she holds the credit agreement with Barclays. In this case I consider that Mrs E does not have the required relationship with the supplier (the car dealer) for a section 75 claim as the contract for the goods (the car) was with her husband.

In coming to this finding I consider Mrs E's initial submissions to be particularly persuasive. From these I am satisfied that the car was intended at the outset to be her husband's car (and he initially test drove it and picked it out) but Mrs E paid because their joint account did not have enough money in it, and she had a higher credit limit. This indicates to me that rather than intend to contract with the dealer, Mrs E was just facilitating the purchase for her husband.

This is reinforced by other persuasive evidence which indicates the contract was with Mrs E's husband. I consider it persuasive that the sales documentation and the warranty are

in the name of Mrs E's husband only. While not always a sole determining factor I find this indicates that Mrs E is not the contracting party here. I have also carefully considered other surrounding evidence and note that the log book for the car is not in Mrs E's name. And it also appears that the insurance was put in her husband's name. This all supports the finding that Mrs E's husband is the sole contracting party in this instance.

I accept Mrs E's submissions that she could have used the car under her comprehensive insurance cover, and that she intended to use the car at weekends and that it was meant as a family car. However, for her to be able to make a claim under section 75 I need to be persuaded that she is a contracting party. Mrs E has not been able to provide sufficient documentation or other compelling evidence which persuades me that it was she who contracted with the car dealer for the purposes of section 75. Although I have no doubt that she had some involvement in the process of helping with the purchase in the capacity of a spouse, or that she may have some use from the car, I am not satisfied that this is enough to make her a contracting party for the requirements of section 75 in this instance.

Overall, in these particular circumstances I am satisfied that Mrs D's husband is the sole contracting party under the agreement with the car dealer. Therefore, taking into account my reasoning above, I do not consider that the necessary 'debtor-creditor-supplier' relationship exists for a valid claim against Barclays under section 75. Therefore, I am unable to consider Mrs D's complaint about the car.

I appreciate that this is not the outcome Mrs D wanted. I can see she feels strongly about the matter. I am not saying that Mrs D has no further options, merely that she cannot proceed with a claim through this service.

my final decision

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

Mark Lancod
ombudsman