

## **complaint**

Mrs H complains about hotel accommodation she paid for with her credit card with Barclays Bank Plc (trading as Barclaycard).

## **background**

Mrs H bought a holiday for her son and her daughter-in-law. This included flights and a hotel room. She paid with a Barclaycard credit card. She didn't go on the holiday herself. Her son brings this complaint on her behalf. He says that the hotel's air conditioning didn't work properly, and this affected his health. He complained persistently, but the hotel just kept fobbing him off. After the holiday he asked Barclaycard for a refund for his mother. Barclaycard told him there was nothing it could do, but it offered Mrs H £100 for having given her son some incorrect information about its procedures during its handling of her complaint. Mr H brought this complaint to our service.

Our adjudicator did not uphold this complaint. She initially said that the third party which had supplied the hotel accommodation had been approached directly and had refused a refund, so she thought that a chargeback would have been unlikely to succeed. She later found that Barclaycard actually had attempted to do a chargeback, but it had not succeeded. And she said that Barclaycard was not liable under section 75 of the Consumer Credit Act 1975.

Mr H said that his mother's complaint had been refused on a mere technicality, and that this was "an example of capitalism in its most horrid form." He asked for an ombudsman's decision.

## **my findings**

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. Having done so, I agree with our adjudicator's assessment, and for the same reasons.

Barclaycard's call handler did try to raise a chargeback, but was unable to do so because the service Mr H was complaining about had already been provided. From that I infer that the chargeback reason the call handler tried to use was that the service had not been provided. He could instead have tried the reason "services defective or not as described." But given that the supplier of the service (the tour operator) refused to pay any compensation, I think it would also have defended a chargeback too. So I don't think a chargeback would have been successful. I think Barclaycard's offer of £100 for poor customer service is fair.

I fully understand why Mr H feels that the rejection of his claim under section 75 is only based on a technicality. But Parliament did not intend that section to apply to every situation.

Section 75 provides that in certain circumstances, the provider of credit – in this instance, Barclaycard – is liable for any breach of contract or misrepresentation by the supplier of the service paid for with that credit. But the section only applies where the person paying for the service and the person receiving it are one and the same. That isn't the case here. Mrs H paid for the hotel, but it wasn't for her.

In making my decision, I have to have regard to what the law says. And I don't agree that it would be fair to hold Barclaycard liable for the failings of a third party in circumstances where the law does not make it liable.

**my final decision**

So my decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H to accept or reject my decision before 1 December 2016.

Richard Wood  
**ombudsman**