

## **complaint**

This complaint is about two monthly premium payment protection insurance (PPI) policies. The policies were attached to two credit card accounts Mr S has held with Barclays Bank Plc trading as Barclaycard, and were the subject of successful claims in 2004. Mr S complains that Barclaycard wrongly told him in 2007 that he could not claim on the policies for a second time – prompting him to cancel the cover. He further complains that Barclaycard recorded adverse information on his credit file after he withheld payments to his credit card accounts in protest at the way it handled his complaint.

## **background**

The adjudicator who considered Mr S's complaint was not persuaded that the reason he had cancelled his PPI policies was because Barclaycard had told him he could not make further claims. Nor did she consider Barclaycard should alter the information it has registered on his credit files – because it was an accurate reflection of the payment record. She recommended Barclaycard pay Mr S £250 compensation for poor service and administrative errors.

Barclaycard agreed to do this, but Mr S did not accept the proposed settlement when it was put to him. He asked for the complaint to be reviewed, maintaining that Barclaycard had effectively stopped providing the cover after his 2004 claim and should refund the premiums charged up to 2007.

## **my findings**

Mr S has raised concerns about how we have dealt with his complaint, and I understand that there has since been an exchange of correspondence with the adjudicator's manager. Here, though, my focus is on the subject-matter of the underlying complaint against Barclaycard.

Mr S has provided a comprehensive narrative detailing all areas where he considers Barclaycard to be at fault. In considering the complaint, I have focused on what I consider to be the crux of the dispute, and in doing so, have not gone into the same degree of detail that Mr S has, or made specific findings on every individual point he has raised. No discourtesy is intended by this. Rather, it merely reflects the informal nature of the Financial Ombudsman Service, and is consistent with what our enabling legislation requires of me.

Mr S maintains that Barclaycard committed a breach of contract in 2004. If I have understood him correctly, he has reached this view based on his central allegation that in 2007, he was told that he could not claim twice on his PPI policies. Insofar as his first claims had been in 2004, it seems Mr S inferred this as meaning his PPI cover had been stopped by the bank at that time, even though he continued to be charged premiums until *he* cancelled the policies himself in 2007.

The first point I should make clear is that I am satisfied that Mr S's PPI policies were not cancelled by Barclaycard following his claims in 2004. The policies still existed, premiums were collected and, under the policy terms, cover continued to be provided. Clearly, Mr S understood that cover was still being provided, because his own evidence is that he contacted the business in 2007 regarding the possibility of making new claims. So there is no basis under which I could fairly conclude that premiums charged between 2004 and 2007 should be returned to Mr S.

Rather, it seems to me that the crux of this complaint, and what I must determine here, is whether Barclaycard told Mr S in 2007 that because he had already made claims on his PPI policies in 2004, he could no longer do so again.

I have considered afresh everything that Mr S and Barclaycard have said and provided from the outset. Where there is a dispute about what happened, I have based my decision on the balance of probabilities – in other words, on what I consider is most likely to have happened in the light of the evidence. That is the approach taken by the courts in civil, as distinct from criminal, cases.

When I do that in the case at hand, I do not find that the available evidence is sufficient for me to conclude on the balance of probabilities that Mr S was wrongly told by Barclaycard in 2007 that, because he had made claims in the past, he could not do so again. In order for me to be persuaded of this, I would have to be satisfied that Barclaycard told him something that was manifestly wrong and easily capable of being contradicted by the policy terms. Overall, I am not persuaded of the likelihood that this is what happened.

Mr S has, it seems, given more than one version of what he was told, in that he has also said that the reason given for not being able to claim in 2007 was that he was a sole trader. This, too, is not correct; Mr S would not be prevented from making a claim simply because he was a sole trader. The policy terms for unemployment claims are different for policyholders who are sole traders rather than employed. Mr S would be able to make a claim, but it would then be for the insurer to decide whether the circumstances leading to the claim met the policy terms necessary for the claim to succeed.

It is, of course, quite possible that the distinction I have set out in the preceding paragraph was explained to Mr S in such a way that he interpreted it as meaning he could not even submit a claim, or indeed it is possible he was given information that was completely incorrect. If that were the case, it seems to me that Mr S might reasonably conclude that the PPI policies were no longer of value to him, hence his decision to cancel them.

If I were to give Mr S the benefit of the doubt, and conclude that he was wrongly led to believe the PPI policies were no longer of benefit to him, then I would then conclude that he had been the victim of a misrepresentation, and had acted to his detriment by cancelling the PPI policies as a result.

Where someone has acted to their detriment as a consequence of a misrepresentation, the appropriate remedy is to put them in the position they would be in if the misrepresentation had not happened to begin with. Applying that principle to the case at hand, if I concluded that Mr S cancelled his PPI policies in 2007 and Barclaycard had wrongly told Mr S he could not claim on them any more, then the fair remedy would be to place Mr S in the position he would now be in if he had not cancelled the policies.

I have seen nothing that would persuade me that Mr S was fundamentally unhappy with the PPI policies prior to 2007, and see no reason to conclude that but for the disputed events in 2007, he would not have continued with both PPI policies up to the present time. It follows logically from this that to put Mr S back in the position he would be in now if he had not cancelled the PPI policies, it would be necessary for Barclaycard to arrange for the policies to be reinstated (back-dated to 2007) and for Mr S to pay the back premiums that would have been collected between 2007 and the present time.

This would then enable Mr S to make retrospectively the claims he was looking to make in 2007. Importantly, however, this course of action would bring with it no guarantee that the retrospective claims would be successful. It would be for the insurer that actually provides the cover – as I understand it, Barclays Insurance Dublin - to consider the claims on their merits and make its own decision on whether they should be paid under the policy terms, in much the same way as it would have done if the claims had been made in 2007.

In all the circumstances, and given the uncertainty over the possible outcome of retrospective claims, I do not consider I could fairly make an order that Barclaycard *must* reinstate the policies, or that Mr S *must* pay the back premiums. If Mr S so wished, and entirely outside our consideration of his complaint, he could *ask* for the policies to be reinstated. It would then be for him and the bank to arrange between themselves for the collection of the back premiums and the submission of the retrospective claims to Barclays Insurance Dublin.

I do recognise that Mr S felt a significant sense of frustration over his dealings with the bank. But, even so, I find that I am unable to accept that the deliberate withholding of his monthly credit card payments was a proportionate response. By doing what he did, Mr S knowingly acted in breach of his contractual obligations. I believe that he must, therefore, accept the consequences of his decision.

One of those consequences was the registration of information on his credit file making the missed payments a matter of record, and the passing of the outstanding debts to a third party recovery agent. Where financial businesses record information about the conduct of their customers' accounts with credit reference agencies, they have a duty to ensure that such information, whether adverse or not, is a factually accurate reflection of how the account has been conducted.

In Mr S's case, there is no dispute that he did withhold payments. In such circumstances, I consider Barclaycard was reasonably entitled to take steps to recover the two debts (including passing them to a third party), and was obliged to register these events on Mr S's credit file. In all the circumstances, I could not fairly order the information be changed.

Finally, the adjudicator concluded that Barclaycard should pay Mr S compensation of £250 for distress and inconvenience arising from its handling of his complaint. Overall, and in all the circumstances, I regard that as fair redress.

Mr S does not have to accept my final decision on his complaint. If he does not, then subject to any time limits the courts might impose, his right to take legal action against Barclaycard will not have been prejudiced by our consideration of his complaint.

### **my final decision**

For the reasons set out above, my final decision is that I uphold this complaint in part only, and direct Barclays Bank Plc trading as Barclaycard to pay Mr S £250 in full and final settlement. I make no further order or award.

Jeff Parrington  
**ombudsman**