

complaint

Mr W complains that Barclays Bank Plc should refund the cost of his wife's cosmetic surgery and pay other associated costs. He paid for the surgery using his Barclays credit card and brings his complaint under Section 75 of the Consumer Credit act 1974.

background

In 2007 Mr W paid for his wife to have cosmetic surgery. It later became apparent that implants used in the surgery were not fit for purpose. Mr W says that is a breach of contract and he has asked for a refund under Section 75 and for other associated costs.

Barclays says that the payment was made by Mr W but the contract for the surgery was with Mrs W, therefore there is no debtor-creditor-supplier agreement and Section 75 does not apply.

Our adjudicator concluded that the complaint should not be upheld. She considered that although Mr W said that his wife managed the credit card account and made equal payments to it, the contract for the surgery was with Mrs W. And as Mr W had made the payment on his credit card the necessary debtor-creditor-supplier chain for a successful claim under Section 75 was not present.

Mr W did not accept this conclusion. He says that the paperwork had to be in his wife's name for medical reasons, a married couple are financially a single unit and that he and his wife had taken on the contract as a couple.

As no agreement has been reached the matter has been passed to me to decide.

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 provides that, under a very specific set of circumstances, a consumer may seek to recover money paid under a contract with a supplier from his or her credit card provider.

In order for me to uphold this complaint under Section 75 I must consider whether a 'debtor-creditor-supplier' agreement exists and whether there has been a breach of contract or misrepresentation.

Having inspected all of the available documentation relating to the surgery it is clear that all of it is in Mrs W's name. Although Mr W says that the documentation is only in his wife's name for medical reasons, it is also clear that the payment was made by Mr W. I accept that this will not, on its own, always mean that there is no valid 'debtor-creditor-supplier' relationship in place, so I turn now to consider the wider circumstances of this complaint.

In this case there is no dispute that the credit card payment was made by Mr W. He says that as a married couple who share their finances, he and his wife are a single economic unit. Whilst this may well be the case, I do not consider that it changes the position on the 'debtor-creditor-supplier' relationship.

I also note that it was Mrs W who underwent the invasive surgery and I am satisfied that the overall circumstances of this case indicate that the contract with the supplier for the surgery was with Mrs W alone.

Whilst, on balance, I am satisfied that there has been a breach of contract because the implants were not fit for purpose, as I have explained this is not sufficient to allow me to uphold this complaint.

Overall and on balance, I am not satisfied that the required 'debtor-creditor-supplier' agreement exists for a successful claim under Section 75. I say this because I consider that the payment was made by Mr W but the service was provided to Mrs W. Therefore I do not uphold this complaint.

Mr W's strength of feeling is clear, and I realise he is likely to be disappointed by my decision. He is not bound to accept it; if he does not, he will be free to pursue the matter against the bank by other means – including in court – if he wishes.

my final decision

For the reasons I have given above I do not uphold this complaint.

Garry Hunter
ombudsman