

## The complaint

Mr B complains that Barclays Bank UK PLC rejected his claim under S 75 Consumer Credit Act 1974 in respect of a camera lens.

## What happened

In April 2020 Mr B purchased a camera lens from a company I will call P, at a cost of £1,804.09. He made the purchase online. He contacted P on 16 April to say he had some concerns about the packaging, though he didn't think the lens had suffered any damage. P responded to apologise and said to let it know if he had any other issues.

Mr B then told P that he thought the lens "has a bit of play/wobble in it." P responded to say this was totally normal and when Mr B reiterated his concern it tested a lens it had in stock and said this was similar and suggested it was due to the mechanism being relaxed when turned off.

Mr B contacted the manufacturer and says that he was advised to change the lens. He said it was quite wobbly and he asked for a replacement. P said that if it replaced the lens the new one would have the same characteristic. Mr B emailed P on 28 April to say he thought it best that he cancel his order and asked for details on how to return it.

P agreed but said that as the lens was being returned as faulty it would need to send it to the manufacturer before issuing a full refund. Mr B didn't agree and said that he was entitled to return the lens under Consumer Contracts Regulations and to receive a refund within 14 days without the need for the lens being inspected.

P offered to arrange collection but it would ask the manufacturer to inspect it but if it wasn't faulty it reserved the right to take a restocking fee from the refund or it could return the lens to him.

Mr B set out his rights as a consumer in more detail and P responded on 1 May to say that:

*"As previously stated we have to send the lens back to [the manufacturer] to be tested due to the value of it.*

*If the lens is returned and is showing either a defect or fault we will issue a full refund.*

*If the item is not faulty and is returned to us in a condition which it was not originally purchased, we do reserve the right to deduct a re-stocking fee for the lens.*

*May I ask you to provide the date of registration of the lens with [the manufacturer] for the warranty if you have at all?*

*However, if the lens is returned un-registered with [the manufacturer], and it is in pristine as new condition, we will issue a full refund. If this is not the case then we will take a restocking fee."*

Mr B said he was aware of a backlog with the manufacturer due to the pandemic and he

asked for confirmation that P would issue a full refund upon the return of the lens.

P replied on 7 May and said that it would take some time to get the lens tested and said:

*"If [the manufacturer] confirms that the lens is faulty and it is returned in as new condition so it can be resold as new, we will issue a full refund. However, if the lens is not faulty then we do reserve the right to take a restocking fee from the refund. As stated in our terms and conditions."*

Mr B made a claim under s 75 to Barclays and it asked for an independent report to establish if the lens was faulty. It offered to fund the cost of a report up to £100. It added that it might be worth returning the lens, but it said it couldn't comment on P's terms and conditions and the possibility of a restocking fee.

He brought the matter to this service where it was considered by one of our investigators who didn't recommend it be upheld. She said that the onus was on Mr B to return the lens at his cost and risk and as he hadn't returned it there had been no breach of contract in terms of the CCRs. On an alternative approach she argued that Barclays could only consider a breach of contract if a fault had been proven.

Mr B didn't agree and said he was happy to return the lens subject to P agreeing to a timely refund of his money which it had refused to do. He had also sought a similar reassurance from Barclays but it refused to give such an assurance.

I issued a provisional decision as follows:

I explained that this complaint had been submitted as a claim under section 75 of the Consumer Credit Act 1974. Section 75 offers protection to customers who use certain types of credit to make purchases of goods or services. Under section 75 the consumer has an equal right to claim against the provider of the credit or the retailer providing the goods or services, if there has been a misrepresentation or breach of contract on the supplier's part.

For section 75 to apply, the law effectively says that there has to be a:

- Debtor-creditor-supplier chain to an agreement *and*
- A clear breach of contract or misrepresentation by the supplier in the chain.

There was no dispute that the debtor-creditor-supplier link is in place and so I had to consider if there was a breach of contract or misrepresentation which falls within the ambit of s 75.

I explained that when a consumer validly exercises their right to cancel, Regulations 34 and 35 of the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 (CCRs) are brought into play which cause traders to have the following *contractual* responsibilities to the consumer:

- To reimburse all payments they've made, other than payments for delivery which are
- over and above the trader's least expensive usual method of delivery.
- To not charge any fee in relation to the cancellation.
- They *can* reduce the reimbursement to take into account any reduction in the value of goods which has been caused by the consumer handling them beyond what is necessary to establish their "nature, characteristics and function".
- If the consumer is sending goods back, to pay the cost of this if it failed to tell the consumer, before making the contract, that the consumer would be responsible for paying for the goods to be returned.

The CCRs also say that the consumer needs to return the goods or hand them over to the trader.

I said that if the trader/supplier fails to honour any one of these contractual responsibilities, then they have likely breached their contract with the consumer because Regulations 34(13) and 35(6) of the CCRs treat them as implied terms. These are therefore breaches of contract that we can consider when looking at section 75 claims.

Turning to the facts of this complaint there seemed to have been some confusion with regard to the basis on which Mr B wished to return the lens. Initially he had concerns that it was faulty in some way and his fears were not alleviated by the assurances given by P. He then sought to return the lens as he was entitled to do under the CCRs which state that *"The consumer may cancel a distance or off-premises contract at any time in the cancellation period without giving any reason, and without incurring any liability."*

I noted P's responses continued to refer to the need to establish if the lens was faulty which was not necessary once Mr B invoked his rights to return the goods under the CCR. Apart from being satisfied that the goods were returned undamaged there was no need to establish if the fault to which Mr B had referred was present. It was clear that with the pandemic it would take some time for the manufacturer to be able to inspect the lens and report back. That would have meant that P would have deferred a refund.

However, I said Regulation 34 of the CCRs states in addition to the section quoted above:

*"Reimbursement must be without undue delay, and in any event not later than the time specified in paragraph (5) or (6).*

*(5) If the contract is a sales contract and the trader has not offered to collect the goods, the time is the end of 14 days after—*

*(a) the day on which the trader receives the goods back, or*

*(b) if earlier, the day on which the consumer supplies evidence of having sent the goods back.*

*(6) Otherwise, the time is the end of 14 days after the day on which the trader is informed of the consumer's decision to withdraw the offer or cancel the contract, in accordance with regulation 32."*

I considered that P's insistence on obtaining a report from the manufacturer before issuing any refund meant that it was intending to break the requirements set out in the CCRs. I was satisfied that it was clear that no refund would be made with the required 14-day period. It also said that if the lens was returned in pristine condition it would issue a full refund.

So, Mr B was left with a lack of clarity with P saying in one breath the lens would need to be inspected by the manufacturer and in the other that it would issue a full refund if it was pristine. I could understand Mr B's reluctance to return the lens while P continued to issue confusing statements. Furthermore, Barclays also refused to confirm Mr B was entitled to a timely refund.

As far as the cost of returning the lens is concerned I noted that P's Terms and Conditions state:

*"If you exercise your right to cancel your order after the goods have been despatched, you will be responsible for returning the goods to [P] at your own risk and cost, therefore, we strongly recommend you use an insured delivery method such as Royal Mail Special Delivery."*

P was entitled to require Mr B to bear the cost of return of the lens, however given the delays in resolving the matter I considered that Barclays should cover such costs.

### **What I've decided – and why**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Mr B accepted my provisional decision. The bank said it could not arrange for the lens to be returned to the merchant and it would send Mr B a returns envelope so that the lens could be returned to it. It added that it could not determine what reduction in value to apply without an independent assessment and asked what figure should be used.

I am satisfied from Mr B's earlier responses that the lens was unused and remains in an acceptable condition. I had suggested that the merchant should be allowed to take account of any reduction in value caused by consumer handling as set out in its terms and conditions. I doubt that there would be any grounds for such a deduction.

In any event the bank has asked that the lens be returned to it so it is not clear that those terms and conditions apply given the goods are not being returned directly to the merchant. Therefore, rather than delay matters further and incur the cost of an independent inspection I consider the bank should refund the full cost.

### **Putting things right**

The bank should accept Mr B's £75 claim.

### **My final decision**

My final decision is that I uphold this complaint and I direct Barclays Bank UK PLC to arrange for the lens to be returned and to give Mr B a refund the cost of the lens. It should also pay annual simple interest at 8% from the date of payment until the date the money is refunded.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 15 December 2021.

Ivor Graham  
**Ombudsman**