

## **The complaint**

Miss S complains about Barclays Bank UK PLC trading as Barclaycard's (Barclaycard) refusal agree to refund her as she has requested.

## **What happened**

In December 2020 Miss S purchased a brand-new watch from a luxury brand retailer while she was overseas. Miss S used her Barclaycard credit card to pay for the watch in part.

Miss S suggests that the watch was misrepresented to her, by the retailer. In particular Miss S tells us that she wanted a certain watch, as far as she was aware the watch had a silver dial face. Therefore she asked the retailer about whether the silver dial face watch was available without roman numerals, she was told it was not. Therefore she went ahead with the purchase of a watch that she thought was the closest watch she could get to what she really wanted.

However Miss S indicates that she found out afterwards that the watch she wanted was available without roman numerals. She indicates once she found out about what she sees as misrepresentation, she returned the watch to the retailer. However, because the retailer would only accept the return of the watch in person, she had to take a flight, stay in a hotel, and pay for Covid test in order to return the watch. Miss S also indicates she had to take time off work and therefore experienced loss of earnings due to this matter. Miss S wants Barclaycard to compensate her for this.

Ultimately the retailer did accept the return of the watch, but not it seems, on the grounds of misrepresentation. The purchase price was refunded to Miss S's Barclaycard account. But she lost out due to transaction charges made by Barclaycard both at the time of the purchase and the time of the refund. Moreover, she was charged interest on the purchase. Miss S wants these charges refunded.

In addition, although Miss S did go on to buy the watch she originally wanted the price had increased by this point. She wants Barclaycard to refund her for the difference between the price she would originally have paid and the price she ended up paying.

Miss S tells us once she returned the watch to the retailer, she found out that it was dented and scratched (although this was not apparent to the naked eye). Miss S's position is that the watch was in this condition when it was sold to her. Therefore it follows that there has been a breach of contract because the watch did not reach the standard she is entitled by law to expect as a consumer.

In seeking a refund Miss S relies in part, on the rights she suggests she has under Section 75 of the Consumer Credit Act 1974 ("Section 75").

In addition, Miss S complains about the customer service she received from Barclaycard. Specifically, she complains about how long it took to deal with matters, it promising service standards that it did not deliver, the difficulty she experienced in using its portal and about letters it says it sent and she says it did not.

Further, Miss S tells us that she missed out on being able to request that Barclaycard carry out a chargeback due to errors made by it.

Initially Barclaycard declined to uphold all of Miss S's complaint. In particular, it suggested that there had been no misrepresentation merely a change of mind on Miss S's part. In addition, it did not accept that there had been a breach of contract. It tells us it did refund the interest. But as to the remainder of Miss S's claim it did not agree to pay Miss S any of the money she asked for.

Dissatisfied, Miss S complained to our service.

Once the complaint was with us we received new information from both Miss S and Barclaycard. Miss S sent us information about the contact she had had with the retailer including information about the sale. Miss S indicated that when she purchased she had asked the retailer about watches with a silver dial face. The retailer's position is that it gave her correct information about the watch with the silver dial face. Moreover the watch that Miss S had actually wanted had a white mother of pearl dial face.

Barclaycard accepted that it should refund some of the charges. It also accepted it had not always provided Miss S with the level of customer service she was entitled to expect, and it offered her £100 for this.

One of our investigators looked into Miss S's complaint. She did not recommend that Barclaycard had to pay this compensation that Miss S wanted. Further she found that the £100 that Barclaycard had already offered was fair redress for its customer service failures.

Barclaycard accepted this recommendation, Miss S did not. In summary, Miss S mentioned that Barclaycard had not responded to her within "prescribed limits". She repeated that Barclaycard had levied charges on her account when it ought not to have done and had taken too long to put this right. Miss S reiterated that the watch had been misrepresented to her, in her opinion. Moreover she thinks that she has sent in sufficient information to show this. She mentioned that in her view she was correct to describe the watch she wanted as having a silver dial face. To support her stance she tells us *"I have also asked independent people to review the watch and no one has describes this as a white mother of pearl"*. Miss S told us again that her position is that the watch was sold to her with scratches and dents and this was a breach of contract. She also raised a new point telling us that selling her a watch which she says had scratches and a dent at the point of sale, was also a misrepresentation.

Miss S indicated she wanted an ombudsman to take a fresh look at her complaint.

## **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.

First, I'm very aware that I've summarised this complaint in far less detail than the parties and I've done so using my own words. I'm not going to respond to every single point made by all the parties involved. No discourtesy is intended by this. Instead, I've focussed on what I think are the key issues here.

Our rules allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts. If there's something I've not mentioned, it isn't because I've ignored it. I haven't. I'm satisfied I don't need to comment on every individual argument to be able to reach what I think is the right outcome.

Miss S seeks to rely in part, on the rights she suggests she has under Section 75. The general effect of Section 75 is that if Miss S has a claim for misrepresentation or breach of contract against the supplier in this case that is the retailer, she can also bring a like claim against Barclaycard provided certain conditions are met.

Miss S complains about Barclaycard's response to her claim of misrepresentation and breach of contract under Section 75. I think it's important to set out my role here. When I make a decision I take account of relevant law. In considering a complaint about a financial services provider, I'm not determining the outcome of a claim that a party might have under Section 75. In deciding what's a fair way to resolve Miss S's complaint, I've taken Section 75 into account as it is relevant law. But that doesn't mean I'm obliged to reach the same outcome as, for example, a court might reach if Miss S pursued a claim for misrepresentation or breach of contract. This service is an informal alternative to the courts.

It follows from what I've said above, if I find that the contract was misrepresented to Miss S or breached then I would think it was fair and reasonable to ask Barclaycard to put things right. The parties disagree about whether the contract was misrepresented and whether it was breached. Where the evidence is incomplete, inconclusive, or contradictory (as some of it is here), I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in the light of the available evidence and the wider circumstances.

I'll look first at whether I think the contract was misrepresented and then at whether I think the contract was breached.

In this context misrepresentation means a false statement of fact that induced Miss S to enter into the contract. Miss S suggests the watch was misrepresented. Barclaycard suggests Miss S just changed her mind. The retailer suggests it gave Miss S correct information about the silver dial face watch and it's not its fault that she in fact meant the white mother of pearl dial face watch.

I think it is clear here that Miss S and the retailer were talking at cross purposes. She was referring to the white mother of pearl dial face watch which in her opinion had a silver dial face. The retailer was talking about the "official" silver dial face watch. This was unfortunate. That said, as far as I am aware the retailer gave correct information about the silver dial face watch. I don't agree that it ought reasonably to have known that Miss S in fact meant the white mother of pearl dial face watch. I accept she made a genuine mistake, and I accept that other people she knows may well have described the white mother of pearl dial face watch as silver dial faced when she asked them. That does not mean that the retailer gave her inaccurate information that induced her to enter into the contract.

For all of these reasons, I don't find that there was any misrepresentation here. It follows that I have no proper basis to say that Barclaycard has to pay the losses that Miss S suggests she only incurred because of what she sees as misrepresentation.

Miss S also suggests that because the watch had scratches and a dent it was misrepresented to her. This is a new argument and has not been investigated either by Barclaycard or by this service. It follows I have no power to look at this point in this decision.

Miss S tells us that the watch did not reach the quality standard she is entitled to expect because it had scratches and a dent. In order to uphold this part of her complaint I'd need to be satisfied that it was more likely than not that the watch was in that condition when it was sold to her because that would be a breach of contract. She no longer has the watch. The information I have suggests this damage did exist. I accept that the damage was not visible to the naked eye. But I have no further information to show what most likely caused this type of damage. So I have nothing to show if the damage was more likely to be caused due to the day to day handling it might have experienced in a shop environment or if it might more likely have been caused by the sort of use that an owner might have subjected the watch to.

However, in any event, I think I don't need to make a finding about this point. Because, even if I accepted that the watch was sold to her scratched and dented, that would not lead to me saying Barclaycard has to pay what Miss S identifies as her consequential losses. I say this because Miss S has already outlined that she returned to the retailer and ran up the expenses associated with this trip and with the exchange of the watch and the new watch

because she wanted to return the watch which she considered had been misrepresented. The expenses had nothing to do with Miss S subsequently finding out, when she had already incurred these expenses, that the watch had scratches and a dent. It follows that I would have no proper basis for asking Barclaycard to pay these expenses in these circumstances.

Miss S tells us about a number of customer service issues that dissatisfied her, although this does not appear to be the main focus of her complaint. Barclaycard indicates it did not always give Miss S the level of customer service she is entitled to expect. It has recognised this likely caused her distress and inconvenience and it has offered her £100 for this. Although it does not accept all the points that Miss S continues to raise about this.

Miss S talks of Barclaycard not observing prescribed time limits. But this service is not the regulator for Barclaycard, we cannot punish Barclaycard for regulatory breaches like the regulator could. Moreover, Miss S suggests that on 5 March she received a letter from Barclaycard that was dated 2 March. She suggests the date of the letter was inaccurate and therefore “*malicious and unfair*”. I accept this may have been a typographical error or there may have been a delay in sending out the letter. However, I don’t see how this is malicious or unfairly hampered the progress of the complaint. That said when I look at the overall impact of Barclaycard service failures I’m satisfied that in the circumstances £100 is a fair offer.

Miss S talks about chargeback. The chargeback process allows credit card users to ask for a transaction to be reversed if there's a problem with goods or services paid for. There's no automatic right to a chargeback, nor is chargeback a guaranteed method of getting a refund. The process is limited to specific criteria.

Miss S suggests that Barclaycard’s delays meant she missed out on the opportunity to ask it to make a chargeback request on her behalf. I’ve made no finding on this specific point about delay. This is because I think it would have made no difference. Looking at the chargeback rules there was no valid chargeback reason. Moreover, the retailer would very likely have defended the chargeback and succeeded. It follows that I find it was unlikely that any chargeback made on her behalf would have succeeded. It also follows that in the circumstances Miss S did not lose out even if Barclaycard caused her to miss the chargeback deadlines. Moreover she would not have been able recover any of what she sees as her consequential damages via this route in any event.

## **My final decision**

My final decision is that Barclays Bank UK PLC trading as Barclaycard’s must pay Miss S £100 for distress and inconvenience as it has already agreed to do.

Under the rules of the Financial Ombudsman Service, I’m required to ask Miss S to accept or reject my decision before 21 October 2022.

Joyce Gordon  
**Ombudsman**