

The complaint

Miss C complains that Barclays Bank UK PLC didn't refund a payment she made to a merchant.

What happened

In May 2021, Miss C booked a modelling photoshoot for her brother with a company I'll call "L". She said that they had searched for modelling studios online because this was a line of work her brother wanted to go into. She said L was the first company to get in touch with them. She said that on the day of the shoot L arranged for her brother to have his hair and makeup done before photos were taken of him.

After the photos were taken, Miss C said that they were told to wait a few hours while L reviewed the photos to assess them. She says they were told her brother had been successful and they were asked to sign up to a modelling package. She says she was encouraged to sign up to the lowest package which was £1,000 and included: photos, 100 business cards, a personalised website and a 'verified' social media account. She says that L also said that they had modelling work already lined up for her brother with a famous watch brand and they would be in contact with her soon about the details. She says L told them they would be able to get at least one paid modelling job per month.

Miss C says she tried to get in contact with L the next day to ask for more detail about the work for the watch brand but the number she had been given didn't work. She says she then tried to find a phone number online and found a number of negative reviews about L indicating they were operating a scam. She contacted Barclays and asked them to cancel the payment she had made. Barclays said it couldn't cancel the payment but did agree to raise a chargeback dispute once the payment had debited her account.

The chargeback was defended by L as it said that Miss C had signed a contract saying she'd received all the goods and that her purchase was non-refundable. Barclays said it wouldn't pursue the chargeback further because it didn't think any further dispute would be successful. It said L had provided evidence to show it sent Miss C photos and that this was all that was agreed under the contract. Miss C complained about Barclays' decision not to refund her, but Barclays didn't uphold that complaint.

Our investigator recommended the complaint be upheld. She didn't think Barclays acted fairly in not pursuing the chargeback further. This was because she thought Miss C had provided plausible and consistent explanations of what she was promised by L and that the contract Miss C had signed (and which L had relied on in its defence) didn't set out exactly what it had agreed to provide. She said there was evidence that more than just photos were to be provided under the contract and L hadn't demonstrated it had provided those goods and services. Further, the investigator wasn't persuaded that Barclays had used the most appropriate chargeback reason code within the chargeback rules in order to give it the best chance of success through the scheme.

Barclays didn't agree. In summary, it said the contract stated the £1,000 was for a 'media purchase' and Miss C signed it to say she had received the goods. It didn't think there was

any evidence to suggest there were ongoing services to be provided by L, such as modelling services or work. It said without evidence of this, the chargeback wouldn't have succeeded if they had pursued it further.

The complaint has been passed to me for a final decision.

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.

Miss C contacted Barclays within a day of making the payment to L. She said that she thought she'd been the victim of a scam and wanted assistance in getting her money back. As Miss C made the payment using her Barclays debit card, I've thought about whether Barclays dealt with her request fairly and did all it reasonably could to assist her.

Barclays attempted to recover the payment by initiating a chargeback through the relevant card scheme. This is a way in which payment settlement disputes are resolved between card issuers (i.e. Barclays) and merchants (i.e. L). In certain circumstances the scheme provides a way for Barclays to ask for a payment Miss C made to be refunded either in full or in part. Those circumstances include (but not limited to) where the goods or services aren't supplied, as described, or are misrepresented by the merchant Miss C paid.

A chargeback doesn't guarantee a refund. L can defend any chargeback made by Barclays, which is what happened here. L provided a copy of the signed contract which said Miss C had received the goods. Where a chargeback is defended, Barclays can make a further presentment to the defence, and it did so in Miss C's case. It provided Miss C with L's initial defence and asked her for further comments. Miss C provided her response and Barclays pursued the chargeback further. However, L defended it once more. This time L provided copies of emails it sent to Miss C which contained a link to the photos it had taken.

The final stage of a chargeback is where Barclays can ask the card scheme to arbitrate on the outcome of the dispute if it continues to be defended by the merchant. Barclays chose not to take the chargeback to arbitration because it said that L had provided persuasive evidence that Miss C had received what she paid for.

Barclays isn't obligated to pursue a chargeback to arbitration, or indeed raise a chargeback dispute in the first place. However, I would consider it good practice for Barclays to do so, where a chargeback right existed and there was a reasonable prospect of success. Further, where there are allegations of a scam, it would be good practice for Barclays to have brought this to the attention of the merchant's bank and of the card scheme by way of a chargeback.

I think Barclays did act fairly by initially attempting the chargeback and pursuing it further following the initial defence put forward by L. However, I don't think it treated Miss C fairly by not pursuing the chargeback again through to arbitration by the card scheme. I'll explain why.

Barclays pursued the chargeback under the reason code "cancelled merchandise/services". Given that Miss C was saying that she believed she'd been the victim of a scam, in other words what she had been promised by L wouldn't materialise, I don't think this was the most appropriate reason code to use in order to give the chargeback the best possible chance of success. I think it would have been more appropriate to have used codes for misrepresentation or goods/services not as described, as suggested by our investigator.

Barclays says that L demonstrated it had provided everything it agreed to do under the contract. I don't agree. The contract simply stated that Miss C had paid for "media purchase". It didn't stipulate what this included. L provided Barclays with a copy of an email it sent to Miss C with a link to the photos it had taken, so I think it's reasonable to conclude that did form part of the contract and that it was likely sent to Miss C. However, that doesn't demonstrate that is all that was agreed.

Miss C has been consistent in describing what she believes was included in the package for £1,000. I've found what she's told us persuasive, not least of all because I find it unlikely she would have paid that amount just for photos alone. I note that L's terms and conditions for the contract refer to it supplying Miss C with "*websites*". I don't think it's unreasonable to conclude this was the website and social media platform Miss C has repeatedly referred to. I can't see that L has ever provided any evidence of it supplying Miss C with one website let alone the more than one it's terms and conditions says it will.

Having considered this discrepancy and the fact that what Miss C describes is consistent with the types of modelling scams which have been publicised online and in the media, as well as what this service has seen previously, I'm persuaded that the contract included much more than just the photos. I think it's more likely than not Miss C was promised those additional goods and services, including guaranteed modelling work. I've not seen anything to demonstrate those were provided or were ever made available to Miss C or her brother.

As part of her response to L's defence to the chargeback, Miss C provided some online reviews for L which she says were in relation to L's previous trading name. These show overwhelmingly negative reviews and references to a scam. While these don't of course demonstrate that Miss C was scammed, it does corroborate what Miss C had said. It also ought to have made Barclays question the discrepancy between what L said about the contract and what the terms and conditions said would be included.

Overall, I don't think Barclays presented Miss C's chargeback through the card scheme in the most favourable way as I don't think it used the most appropriate code. Further, I think Miss C had adequately demonstrated that the contract was for far more than just photos and that it was the misrepresentation of the other services that induced her into entering into the contract when she otherwise wouldn't have. Given all this, and the wider suggestions that Miss C had been the victim of a scam, I think had Barclays robustly pursued the chargeback through to arbitration, using the most appropriate codes, I'm persuaded the chargeback would more likely than not have succeeded.

Barclays actions have therefore unfairly prevented Miss C from potentially recovering the payment that she made and it should refund that payment to her to put things right. I've thought about whether Miss C should only receive a partial refund given there does appear to be evidence she received some of the agreed goods (the photos). However, I'm not persuaded that Miss C or her brother has derived any meaningful benefit from those photos. I say this because I'm satisfied the purpose of her entering into the contract was for her brother to obtain modelling work, not to receive the images. I therefore don't consider it necessary to make any deduction for what they did receive.

My final decision

For the reasons given above, I uphold this complaint and direct Barclays Bank UK PLC to:

- Refund Miss C £1,000, adding 8% simple interest per year on that refund from the date of the transaction to the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss C to accept

or reject my decision before 8 August 2022.

Tero Hiltunen
Ombudsman