

The complaint

Mr P's complaint is about Barclays Bank UK PLC (trading as Barclaycard) not refunding payments he made on an online casino website.

What happened

The circumstances of this complaint are well known to both parties, so I will not repeat them all again here in detail. But I will provide an overview of events below.

In short, Mr P made several payments to his online casino account with a company I will refer to as O in this decision. These payments were made using Mr P's Barclaycard Visa credit card, which amounted to about £9,400. Mr P disputed these payments with O and received a partial refund as a result. He also contacted Barclaycard to try to recover his funds. As this did not happen, he raised a complaint which he also referred to our service.

Mr P says, amongst other things:

"The issue that I have experienced was: I was unaware that the service provided by the merchant was based in Russia and charged to my account in Russian currency. In the UK it is illegal for consumers to be able to deposit to online gambling establishments using their credit cards, when I entered my details into your website as it was a credit card it should have been blocked from making the deposits. This should have immediately prevented me from depositing money. I believed that the establishment was UK based and UK regulated which should have triggered the credit card to be immediately blocked to make deposits by the casino."

One of our investigators considered the complaint and did not uphold it.

Mr P did not accept the investigator's findings. As an agreement could not be reached, the complaint has been passed to me to make a decision.

On 12 May 2022, I issued a provisional decision not upholding this complaint. For completeness, I repeat my provisional findings below:

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

Having done so, I am of the view that this complaint should not be upheld – but for different reasons to those put forward by our investigator.

But first, I would like to say at the outset that I have summarised this complaint in far less detail than the parties involved. I want to stress that no discourtesy is intended by this. If there is a submission I have not addressed, it is not because I have ignored the point. It is simply because my findings focus on what I consider to be the central issues in this complaint.

Chargeback

Chargeback is an entirely voluntary scheme, which means banks are under no formal obligation to raise a chargeback claim. The scheme operator can ultimately arbitrate on a dispute between the merchant and customer if it cannot be resolved between them. However, such an arbitration is subject to the rules of the scheme – so there are limited grounds on which a chargeback can succeed. My role is to determine whether the regulated card issuer (in this case, Barclaycard) acted fairly and reasonably in its decision not to present a chargeback on behalf of its cardholder (in this case, Mr P).

Mr P's payments were made to a company I will refer to as K in this decision, rather than O. From what I can see, K are payment processors. The service they provided Mr P was: being a network through which he could transfer his funds to O. Because of this, if Barclaycard had raised a chargeback against O, I am persuaded, on balance, they would have been able to provide evidence showing the service they provided Mr P. It follows then that Barclaycard acted fairly and reasonably by not presenting a chargeback on behalf of Mr P, as K would have likely been able to defend the claim successfully.

I acknowledge Mr P's points about merchant codes and the fact he was unaware that O was based in another country. However, for the purposes of the Visa chargeback scheme, Mr P's submissions would have had no bearing on his chargeback claim if one had been raised.

Turning now to whether Mr P had any section 75 rights.

Section 75 of the Consumer Credit Act 1974

In Mr P's case, on the face of it, there does appear to be a four-party agreement because O used K as a payment processor. However, despite Mr P's submissions, I am satisfied that he received services from O. That is, Mr P was able to load his O account with funds and had the ability to use them – thus receiving services from O. It follows from this that there is no identifiable action for breach of contract and/or misrepresentation – which is a requirement under the 1974 Act.

In response to our investigator's findings, Mr P says, amongst other things:

"One final point, the service was not provided. As soon as I made the deposit of funds and it loaded them onto the website in Russian currency, I did not use the funds to them gamble. You can tell by the merchant providing me with a partial refund that I am not to blame and therefore I think I should have a full refund."

Having considered this, I am unable to agree with Mr P. I say this because:

- Mr P has not provided any evidence to show he did not receive any services from O.*
- Mr P did not raise this point with Barclaycard when he disputed the payments he made.*
- Mr P did not initially raise this point with our Service. The first time he did was in response to our investigator's findings.*

Further or alternatively, by Mr P's own submissions, he was able to deposit funds to his account with O. The fact he chose not to use the funds does not mean he did not receive services from O.

So, taking all the above points together, I am satisfied that Mr P does not have any section 75 rights regarding the payments he made.

Other issues

Mr P says Barclaycard could have done more to support him with his issues with gambling. He also says that it is illegal in the UK to be able to make credit card payments to gambling establishments; therefore, Barclaycard should not have processed his payments.

Based on the evidence before me, I can see that Barclaycard has a copy of Mr P's gambling self-exclusion form. So, I am satisfied that Mr P had taken steps himself to address his gambling problem and that there was something in place to support this.

However, as I set out above, the issue in this case is that Mr P's payments were not categorised as gambling transactions. With this in mind, I cannot fairly say Barclaycard should have taken steps to block Mr P's payments. I say this because Barclaycard would not have been able to identify them as gambling transactions because of the categorisation of the payments.

Responses to my provisional decision

Barclaycard responded to say it agreed with my provisional findings, but Mr P did not respond.

What I have 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.

Given that Barclaycard agreed with my provisional findings, but Mr P did not respond – I see no reason to depart from them.

My final decision

For the reasons set out above, my final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 27 June 2022.

Tony Massiah
Ombudsman