

## The complaint

Miss A is unhappy how Barclays Bank UK PLC trading as Barclaycard handled her request for help to recover money following a payment she made to stay at a holiday home.

## What happened

In early October 2021 Miss A booked a holiday home for a couple of days for her family and two others. She used a booking agent, who I'll refer to as V, to arrange the booking and paid the full amount of £1,789.20 using her Barclaycard. The trip was scheduled for the end of October 2021.

Just under a week before the trip was due to happen, a member of Miss A's family caught Covid-19. At this time, she messaged the holiday home owner, who I'll refer to as D, to enquire about either cancelling the trip – Miss A realised this was outside of the terms and conditions for a refund – or changing the dates. D responded to say that he would try and re-let the holiday home for the dates in question, and if he could, he would arrange a refund for Miss A. He didn't answer her question about the possibility of changing the dates of the trip.

Over the next couple of days Miss A messaged D several times to ask if he had managed to re-let the holiday home or if it was possible for her to amend the dates of the booking. D didn't respond to those messages, so the day before the trip was scheduled Miss A messaged him again to say that, as D hadn't responded to her messages about re-letting the holiday home or changing the dates, the other members of the travelling party would be making use of the booking as intended. At this point, D replied to say that he hadn't been able to re-let the holiday home, but Miss A had asked to cancel the booking and the holiday home was no longer available. He told Miss A to let the other guests know not to travel.

Miss A continued to speak to D as she wasn't happy about this. D said that the cancellation policy was clear from the outset and no refund would be given. Miss A also spoke to V about this, as they had been used to make the initial booking, but they weren't able to help.

Unable to resolve the situation with D or V, Miss A got in touch with Barclaycard. She completed a disputed transaction form and asked them for their help in getting her money back. Barclaycard said they were unable to help. They said they couldn't consider a claim under Section 75 (s75) of the Consumer Credit Act 1974 as there wasn't a debtor-creditor-supplier (DCS) relationship in place to allow a claim to be made. They didn't raise a chargeback claim for Miss A, as Barclaycard didn't think it had any prospect of success.

Miss A brought her complaint to our service. Our investigator upheld it. She said she didn't think the messages Miss A had sent to D confirmed that she wanted to cancel the booking. She said Miss A was enquiring about the options available to her, including cancellation or changing the dates of the trip, but D hadn't responded to those requests. As D hadn't responded and Miss A hadn't confirmed she wanted to cancel the booking, our investigator said she thought Barclaycard had enough information to raise a chargeback claim for Miss A as she hadn't received the service she'd paid for. She asked Barclaycard to refund Miss A the full amount, backdated to 24 November 2021. She also asked them to reconstruct

Miss A's credit card account to reflect this, and refund Miss A if she would have been in credit at any point. She said 8% simple interest should be paid on those amounts from the date she would've been in credit to the date of settlement.

Barclaycard didn't accept our investigator's opinion. They said they didn't think success for a chargeback could be guaranteed as Miss A had mentioned cancellation on her dispute form and there was insufficient evidence to be certain of what happened.

As Barclaycard didn't agree, it's been passed to me to decide.

### **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.

There are different ways that a bank can assist customers who have had issues with goods or services not being provided. In some cases, a bank may be able to request a refund from the supplier through the chargeback scheme. This is a way in which payment settlement disputes are resolved between cardholders and suppliers/merchants. They are dealt with under the relevant card scheme rules and in this case that's Visa. In certain circumstances the process provides a way for Barclaycard to ask for a payment Miss A made to be refunded. Those circumstances can include where services aren't supplied.

There is no obligation for a card issuer to raise a chargeback when a consumer asks for one. But I would consider it good practice for a chargeback to be attempted where the right exists and there is a reasonable chance of success.

When a chargeback is raised, the scheme allows a given period of time – usually around a month – for the supplier to reply to say whether or not they agree to the refund. And when a supplier does defend a chargeback, this can lead to further representations by the cardholder's bank. The process then allows for further representations to be made, if parties do not agree for the issue to be decided by the scheme in a process known as arbitration. Alternatively, or in addition, a bank can go on to consider whether there has been a breach of contract (or misrepresentation) under s75.

S75 says that in certain circumstances the borrower under a credit agreement has an equal right to claim against the credit provider if there's either been a breach of contract or misrepresentation by the supplier of goods or services.

But for s75 to apply, there are certain criteria that need to be satisfied before looking at whether a breach of contract or misrepresentation has occurred. These include that there is a specific relationship between the parties, known as the DCS relationship and that the purchase meets a certain cash price.

In Miss A's case Barclaycard chose not to raise a chargeback when her disputed transaction form was received. They have told our investigator that they feel it had very little chance of success as Miss A had mentioned her intent to cancel the booking on the form. But I'm not persuaded that is the case here. And I do think Miss A had a chance of success had a chargeback been raised. I'll explain why.

Miss A paid V for her booking, and, for the purpose of chargeback, they are the merchant of record in this situation. So, they're responsible for chargebacks where the service paid for has not been received. And I think Barclaycard should have raised the chargeback since the agreed service wasn't provided. I say this because, having looked at the communication between Miss A and D from the time in question, I'm satisfied that Miss A didn't confirm she

wanted to cancel the booking. From the outset of her communication with D, Miss A explained that one member of her family had caught Covid-19 and she wanted to explore the options she had available to her and the other travellers. I accept that she did ask about cancellation of the stay, but that was done alongside other potential options, such as amending the booking to a later date. At no time have I seen anything to confirm Miss A cancelled the booking, either with D or via V's website. Indeed, the booking still showed as confirmed on Miss A's account with V until the date it was due to go ahead.

D did explain that, should Miss A cancel the booking she wouldn't be entitled to a refund under the terms and conditions of the booking. I don't think Miss A disputes that, or that a refund wouldn't have been applicable had she cancelled the booking at that time. That's why she was exploring other options available to try and make use of the booking. But I'm satisfied that it was only D's interpretation of events that led to the holiday home not being available on the date it was booked for. D originally explained that he would try and re-let the holiday home for the dates in question and, if he could, he would then provide Miss A with a refund – it's possible that had he been able to do that, then Miss A would have proceeded to cancel her booking. However, D didn't get back in touch with Miss A to discuss a way forward. It was only when Miss A confirmed to D that the other travelling members of the party would be making use of the booking, due to his lack of response, that he replied to say he had cancelled the booking as she had requested, so the other members of the party wouldn't have access to the holiday home.

Having considered all the information in this case, I'm more persuaded than not that Miss A had a prospect of success had a chargeback been raised by Barclaycard. I haven't seen anything to suggest Miss A requested to cancel the holiday home, and I don't think V would have been able to provide anything had the chargeback been raised with them. Because of that, I think Barclaycard have incorrectly denied Miss A the chance to receive a refund through the chargeback scheme.

As I'm satisfied Barclaycard should have pursued the chargeback claim with the information they had, I would normally now ask them to look at raising the chargeback, provided it was still within the time limits specified by the rules. But in this case, it's now outside of those time limits. So, I think it's fair to ask Barclaycard to refund the total amount of £1,789.20 to Miss A. They should make this refund to her credit card at the time they declined her claim by reworking her account and paying 8% simple interest on any periods of positive balance that come about as a result of the rework of the account. Barclaycard should also explain their workings to Miss A when they confirm settlement to her in writing.

As I'm satisfied Barclaycard should have raised a chargeback when Miss A got in touch with them, and I'm persuaded she had a good chance of success, I haven't commented on the s75 aspect within this decision.

## **My final decision**

For the reasons above, I uphold this complaint. Barclays Bank UK PLC trading as Barclaycard must:

- Refund Miss A the total amount of £1,789.20.
- Pay Miss A 8% simple interest on any periods of positive balance that come about as a result of the reworking of her account, as outlined above.\*

\*If Barclays Bank UK PLC trading as Barclaycard consider that they're required by HM Revenue & Customs to deduct income tax from that interest, they should tell Miss A how much they've taken off. They should also give Miss A a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss A to accept or reject my decision before 26 April 2023.

Kevin Parmenter  
**Ombudsman**