

The complaint

Mr S complains about Barclays Bank UK PLC ("Barclays") handling of a claim he made to them under section 75 of the Consumer Credit Act 1974 ("section 75").

What happened

The details of this complaint are well known to both parties, so I won't repeat them again here. Instead I'll focus on giving my reasons for my 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.

I know it will disappoint Barclays, but I agree with the investigator's view of this complaint.

Where the information I've got is incomplete, unclear, or contradictory, as some of it is here I have to base my decision on the balance of probabilities.

I've read and considered the whole file, but I'll concentrate my comments on what I think is relevant. If I don't comment on any specific point it's not because I've failed to take it on board and think about it but because I don't think I need to comment on it in order to reach what I think is the right outcome.

When something goes wrong and the payment was made with a credit card, as is the case here, it might be possible to make a section 75 claim. This section of the Consumer Credit Act (1974) says that in certain circumstances, the borrower under a credit agreement has a like right to claim against the credit provider as against the supplier if there's either a breach of contract or misrepresentation by the supplier.

The business could also raise a chargeback claim but they didn't have to do that as chargeback is a voluntary scheme. The redress provided through chargeback would have been likely to be the same as under section 75, so I'll focus here on whether Barclays decision to reject Mr S's section 75 claim was a fair and reasonable one.

I'm not determining the outcome of a claim that a party might have under section 75. I take section 75 into account when I think about what's a fair way to resolve the complaint, but I don't have to reach the same view as, for example, a court might reach when considering breach of contract or misrepresentation.

From what I can see, all the necessary criteria for a claim to be made under section 75 have been met.

Mr S bought music festival tickets and hotel accommodation but when the festival was postponed Barclays didn't uphold his section 75 claim as they said there'd been no breach of the merchant's terms and conditions. They said the terms allowed the merchant to make changes to the event, such as location, date, and line up and that they didn't need to provide a refund.

The Consumer Rights Act (2015) is the relevant legislation and section 62 sets out circumstances when an unfair term will not be binding on a consumer.

Terms may be deemed unfair if they are contrary to the requirement of good faith and/or they cause a significant imbalance between the rights of the trader and the consumer.

Only a court can decide if the terms are unfair, but I take the relevant legislation into account when deciding if Barclays decision to reject Mr S's section 75 claim was fair and reasonable.

The event that is now available to Mr S is significantly different to the one he paid for. It is in a location that's about 100 miles away from the original venue and it's taking place a year after it was originally scheduled. I think the terms Barclays rely on to justify rejection of the claim do cause a significant imbalance between Mr S's rights and those of the trader and they can't reasonably be seen as fair in this case.

In those circumstances I think there has been a breach of contract as Mr S hasn't received the product he paid for.

Putting things right

Barclays should refund the money Mr S paid and for his ticket/accommodation package.

My final decision

For the reasons I've given above I uphold this complaint and tell Barclays to refund the money Mr S paid for his tickets.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 2 February 2023.

Phillip McMahon
Ombudsman