

The complaint

Mrs S is unhappy with how Barclays Bank UK PLC ('Barclays') handled a claim she made in relation to a purchase on her credit card.

What happened

Mrs S bought tickets for a show in June 2019 through a ticket booking agency ('the supplier'). The show took place on 7 Dec 2019. However, Mrs S is unhappy with the view and says it was obstructed. In summary, she says the tickets were misrepresented– and should have been advertised as restricted view.

Mrs S was unable to get a refund from the supplier or the theatre. So she made a claim to Barclays under Section 75 of the Consumer Credit Act 1974 ('Section 75'). It did not uphold the claim. Mrs S was unhappy with this response – and also the way Barclays had handled the claim. So she made a complaint which was referred to our service.

Our investigator did not uphold the complaint. In summary, he was not persuaded that the tickets should have been marked as restricted. So he didn't think that Barclays were responsible for any claim for breach of contract or misrepresentation by the supplier via Section 75.

Mrs S disagrees with the outcome and has asked for the complaint to be passed to me for a final decision.

I issued a provisional decision on this case. In this I said:

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

Firstly, can I say that I am sorry to hear Mrs S and her group were unhappy with the tickets. However, it is worth noting that Barclays are not the supplier of the service here, so any liability it has for what took place is subject to the specific card protections available. In this case these are Chargeback and Section 75. With that in mind I have gone on to consider the complaint against Barclays.

Before I go into things in more detail I just want to say I am aware Mrs S has raised some concerns around data handling and freedom of information. These issues are not part of this complaint so I will not be dealing with them here.

Section 75 does not apply

I will start with Section 75 as it has been the focus of this complaint to date. It allows a consumer who has purchased goods or services on their credit card to bring a 'like claim' against the provider of credit for a breach of contract or misrepresentation by the supplier paid for using the credit. However, for it to apply Section 75 is subject to specific criteria as laid out in the legislation.

Section 75 will only apply where a claim relates to any single item with a cash price exceeding £100 (and not more than £30,000). The cash price of the single item is relevant here – not the total Mrs S paid on her card or any extra fees such as processing and postage charges. In this case Mrs S purchased individual tickets each separately priced at a face value under £100. Therefore Section 75 does not apply here. Although it is worth noting that even if it did apply my conclusions would be unlikely to differ from those below.

Section 56

There is another part of the Consumer Credit Act 1974 that might apply here particularly as Mrs S has sent in information which confirms she made the booking. This is Section 56 and what it means is that Barclays could be held responsible for a misrepresentation made to Mrs S by the supplier (prior to her paying for the tickets).

Therefore, I have considered what Mrs S has said and provided about the tickets and her central claim that the supplier is culpable of misrepresentation because it did not label these as restricted view seats.

I believe what Mrs S has demonstrated is her strong opinion that the view was not satisfactory and should have been labelled a certain way. And she is entitled to this. But she has not provided persuasive evidence that shows the supplier marketed the tickets in a factually incorrect way.

I note the theatre and the producers have confirmed the seats the tickets relate to were not classified as restricted view for the show nor to their knowledge had those seats ever been classified as restricted. There is no persuasive information that shows these tickets were classified as restricted view and the supplier went on to falsely sell these without said description. For the sake of completeness I don't think the offer by the theatre of a complimentary show convinces me that the tickets were incorrectly marketed either. It appears this was an offer of goodwill rather than anything else.

I also note that Mrs S has sent in photos of the view against the supplier's information about what restricted view seats are – but to me this is not compelling evidence that these tickets were misrepresented. In fact the view of the stage (while not dead centre) looks unobstructed and like a normal theatre seat to me. I think this shows how ultimately this comes down to opinion rather than a false representation of fact.

Chargeback

Chargeback is a way that Barclays might have been able to raise a dispute. Chargeback is limited by the particular scheme rules that apply and is not a guaranteed way to get money back.

It appears that Barclays did not raise a chargeback here, although that is unclear. In any event, I don't think it would have likely succeeded in any event. I will explain why.

I have considered the particular card scheme rules that apply to the card Mrs S bought the tickets with. And I note that the general time limit it provides for raising a claim is 120 calendar days from the transaction processing date. Some of the rules (such as the one relating to services not being as described or defective) specify 120 days from the date the cardholder receives the service. So when Mrs S raised her claim with Barclays on 6 April 2020 she was already out of time under the chargeback rules and any chargeback would have failed.

Even if Mrs S were not out of time I would also be unable to fairly conclude that her claim would likely have succeeded based on there being no admission of liability from the supplier or persuasive evidence that Mrs S did not receive the tickets she booked.

All things considered, with what I have already stated in mind, I don't think it is fair and reasonable to say Barclays is responsible for paying a refund of the tickets to Mrs S.

Customer service concerns

Mrs S says Barclays did not handle the claim well – in particular that it gave her a temporary credit without explaining things fully then decided to claim it back six months later. Mrs S says this led her to believe her dispute with Barclays was over.

I have looked at the way the claim was handled. I can see that despite the initial claim in April 2020 it took until August 2020 for Barclays to respond in full. This was not ideal but I do have to take into account the circumstances around the pandemic which would have disrupted processes for Barclays.

However, I can then see that when Mrs S disputed the outcome of the claim response Barclays added a credit on the account then took around 6 months to respond to the appeal. This was not great customer service. I also think that while Mrs S had no reasonable cause to think the temporary credit meant she had won the dispute (her statement says it is a temporary credit and all correspondence up to then indicated Barclays disagreed with her) the lack of communication and time it took to re-debit is not ideal and would likely have caused a reasonable degree of frustration and annoyance

So while I think there were aspects around the pandemic that impacted Barclays through no fault of its own – I do think it still could have done better here with the way it handled the matter. So I think Mrs S should be awarded some compensation to reflect the distress and inconvenience caused. I have thought about the sort of level of compensation due here and I think £100 is a reasonable sum.

My provisional decision

I partly uphold this complaint and direct Barclays Bank UK PLC to pay Mrs S £100 compensation for the distress and inconvenience caused in handling her claim.

Barclays responded to say it did not necessarily agree with my reasons for awarding £100 compensation. However, it would be willing to pay this to resolve the issue.

Mrs S did not agree with the decision. In summary, she responded to say:

- the provisional decision is flawed as it is based on contradictory evidence and there is no evidence that contradicts her own evidence despite many months of investigation
- more investigation is needed (for example, contacting the ticketing agent, theatre and production company) 'before an unbiased decision' can be reached
- the ticketing agent website showed the seats to have an unrestricted view but this was not the case – the website says that tickets should be marked regarding a restricted/obstructed view but there was no information regarding this so it broke the terms and conditions of sale

- the term I am '*looking for regarding the miss [sic] sold tickets is Silent Misrepresentation when the seller is fully aware the item sold is not fit for purpose but withholds this information from the purchaser*' – causing a wasted trip to a performance they could not see
- the photo she provided showing the view from their seats has the curtains closed and does not truly reflect how restricted the view is - '*The point you are missing or choosing to over-look is that the area you view in front of the curtains is not the actual performance stage...*'
- she does not agree the purchase is outside the cash limits for a Section 75 claim as it is not possible to buy tickets without paying the additional charges and this wasn't a finding made by other parties
- she was outside the time to raise a chargeback but did her due diligence and was also impacted by the pandemic – yet she has not been afforded '*additional leeway*' like Barclays for taking some time to reply to her concerns
- there is no factual evidence to support my view regarding the seats – only a reliance on my own personal view
- there was no letter sent to indicate the credit was a temporary one and at the time she believed the matter had been resolved – and the wording on the statement would not have clearly shown the credit was temporary

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.

In her response Mrs S has made some additional comments about the decision-making process. She has indicated on the one hand that my review is not independent as it comes to similar conclusions to others but has also questioned why in places it appears to have departed from the findings of others. I want to make it clear that my review is independent from our investigator and other parties – I have looked at the evidence afresh to impartially decide what I consider is fair and reasonable in the particular circumstances here. Furthermore, my conclusions regarding the alleged misrepresentation are based on careful consideration of the evidence provided.

Mrs S has again mentioned her complaint about data handling. This is not something that formed part of her original complaint so I will not be dealing with it here.

I acknowledge how invested Mrs S is in this matter and her strength of feeling about the case but I don't consider that I need to do more research or task Barclays to provide further evidence. I note the parties have also had a reasonable opportunity to provide information which I have read and considered. It is now for me, in my role as an ombudsman to make a final decision on the matter – which Mrs S does not have to accept if she chooses.

I think Mrs S has largely repeated information I have already read and considered. It does not change my provisional findings (as set out above) which I still consider fair and reasonable in the circumstances. So I do not wish to indicate discourtesy by not addressing everything in the level of detail Mrs S has done. I have also focused on matters I consider to be relevant here and where matters are unclear I make my decision on the balance of probabilities.

Mrs S has said my finding that Section 75 does not apply is incorrect because in order to buy tickets you also have to pay additional charges. I do not agree that my interpretation is incorrect and have carefully considered the matter. Section 75 refers to the cash price the supplier attaches to a '*single item*' – in this case I consider the most logical interpretation is that a single item is each ticket which is priced and available to purchase separately (in fact this is illustrated by the fact that Mrs S did not buy all the tickets together).

Each single ticket is individually priced with a face value of £85. I note there is a service charge applied to each ticket of £14.25 ($£85 + £14.25 = £99.25$) but even if I were to accept the argument that the service charge forms part of the total item price – each ticket is still under the cash limits required for a valid Section 75 claim. I note there is a £3.95 fixed charge applied to the overall booking by the ticket agent for delivery and transaction fee but (whether mandatory or not) this is a separate fixed charge for other services and does not form part of the cash price of any single item here.

So ultimately, because of the legal requirements set out by the Consumer Credit Act 1974 I am satisfied that Section 75 does not apply. But as I have already said – even if I were to conclude that Section 75 did apply here I don't think it makes a difference to my findings regarding the alleged misrepresentation.

Mrs S has indicated that I should be contacting the ticket agent ('the supplier') and the theatre/producers to get more information. But there are already emails from the theatre and the production company on file (which Mrs S herself provided) stating that the seats were not classified as restricted for the performance (or apparently any other performance). I referred to this in my provisional decision and it is persuasive factual evidence in showing the supplier was not required to advertise the tickets as restricted view. So the absence of this marking on the tickets or advertising for the tickets is not a misrepresentation (by omission or otherwise). Nor for the sake of completeness do I think the supplier has contravened its own terms by advertising the tickets in this way. I don't think further information from the supplier will alter this finding either – as its own information (as Mrs S has referred to) appears to reinforce that the seats were not classified as restricted.

Mrs S has placed emphasis on what she sees as my reliance on a photo she sent in that shows a view from her seats on performance day and she says does not tell the whole story. I want to be clear that I have not simply relied on this photo as a basis for my finding. I refer Mrs S back to my findings above regarding the persuasive information from the theatre and the production company. However, I have referred to the photo as part of the information Mrs S has asked this service to consider. And in doing so my view is that the picture is not a compelling piece of evidence in support of Mrs S's allegations that these tickets were in fact restricted view and the supplier went on to falsely sell these without said description.

Furthermore, in light of the overall evidence here – including what the theatre and production company has stated I don't think that Mrs S's drawings of viewing angles, other photos or testimony regarding the different parts of the stage is persuasive in showing, on balance, that the tickets were misrepresented by the supplier. Nor, is there any persuasive evidence to support her allegations that the supplier knowingly withheld information to sell her tickets that were not fit for purpose.

I note the comments Mrs S has made about why she was out of time to raise a chargeback. But Barclays are not able to change the timeframes as laid down in the chargeback scheme rules so I don't think it needed to act differently here. As I have already said in my provisional decision – I also consider it unlikely that the chargeback would have succeeded in any event.

Mrs S has also indicated that when she received the temporary credit she thought she had

won the dispute and that 'TEMPCR' on the statement didn't clearly indicate the credit was temporary. However, considering the circumstances here (and noting the correspondence leading up to the credit) I don't agree that it would have been reasonable for Mrs S to assume that she had won the dispute. As I have said already I do acknowledge the frustration caused by the customer service issues – and consider £100 to be a reasonable amount of compensation to reflect this.

In conclusion, and for the reasons given here (including my provisional findings as incorporated above) I don't consider that Barclays is fairly liable for refunding the price of tickets to Mrs S here. However, I do think it should pay her compensation for customer service issues if she accepts my decision.

Putting things right

Barclays should pay Mrs S the compensation as directed below.

My final decision

I partly uphold this complaint and direct Barclays Bank UK PLC to pay Mrs S £100 compensation for the distress and inconvenience caused in handling her claim.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S to accept or reject my decision before 14 January 2023.

Mark Lancod
Ombudsman