

The complaint

Mr T complains Barclays Bank UK PLC, trading as Barclaycard, has not handled fairly a claim he brought under section 75 of the Consumer Credit Act 1974 (“CCA”).

What happened

I issued a provisional decision on Mr T’s case on 4 October 2022 which covered the background in detail, so I won’t narrate everything that has happened in this final decision. In brief summary:

- Mr T purchased a television (“TV”) in July 2020 at auction from a private seller on a well-known online marketplace. He paid £1,550 for the TV, on his Barclays credit card, and the payment was processed via a payment facilitator, “P”.
- Mr T found the TV was damaged on delivery and wasn’t working. He raised a dispute via the marketplace’s internal disputes programme which was ultimately unsuccessful. He also explored whether the TV could be repaired and commissioned a report from the manufacturer to this end, which cost him £350.
- After being unsuccessful in his dispute via the marketplace, Mr T involved Barclays and sought to make a claim under section 75 of the CCA. The bank told Mr T it couldn’t take his claim further due to the involvement of P in the transaction (it said doing so broke the debtor-creditor-supplier – “DCS” – agreement which needed to be in place for it to be liable). It did, however, attempt to obtain a refund via the “chargeback” process. This was unsuccessful.
- Mr T was unhappy with how Barclays had dealt with things and complained. His complaint ended up being referred to the Financial Ombudsman Service for an independent assessment. One of our investigators looked into the matter. She made further enquiries about P’s role in the purchase, and came to the conclusion that it had been involved in a way which did not break the DCS agreement. She also concluded the TV had been damaged in transit, meaning it didn’t meet its advertised description. There had therefore been a breach of contract for which Barclays could be held liable under section 75.
- There was some back and forth, but in the end our investigator recommended Barclays cover the cost of repairing the TV, the cost of the manufacturer’s report, plus compensatory interest and £100 compensation. Communications broke down between all parties however, which meant the case was passed to me to decide.

I then issued a provisional decision. I could summarise my provisional findings as follows:

- There were a number of matters which were not in dispute. Firstly, it wasn’t disputed that the chargeback process had failed and there was little more Barclays could have done to obtain a refund via that route. Secondly, it wasn’t disputed any longer that there was a valid DCS agreement which would allow Mr T to hold Barclays liable for breaches of contract or misrepresentations by the seller of the TV. I noted our

investigator's analysis that P had acted as a payment processor, and that this meant the DCS agreement was valid, was in line with relevant case law on the subject. Finally, it was not disputed that the TV had been damaged during the process of delivery to Mr T, rather than it becoming damaged after it had come into his possession.

- I considered what legislation would apply to Mr T's purchase. The evidence suggested he had bought the TV from a private seller rather than a trader, so the Consumer Rights Act 2015 ("CRA") didn't apply. Instead, the applicable law was the Sale of Goods Act 1979 ("SGA").
- The effect of the SGA was that it was an implied term of the contract of sale that the TV would match any description given to it by the seller. The seller has described the TV as being in full working order but when Mr T had received it, it was broken. On the face of it, there had therefore been a breach of contract by the seller unless responsibility for damage during delivery fell on Mr T. The SGA didn't make any specific provision for who would be responsible for goods being damaged in the course of delivery, but this didn't matter because it was apparent Mr T and the seller had agreed that the seller would be responsible for such damage. Both would have needed to sign up to the marketplace's "user agreement", which made it clear that sellers agreed to take responsibility for damage in transit.
- Mr T could hold Barclays liable for the seller's breach of contract in supplying him with the broken TV, under section 75 of the CCA. So this left the question of what an appropriate remedy would look like.
- I noted that ordinarily Mr T would be able to claim damages for the breach of contract, or terminate the contract and recover the money he'd paid. The latter wasn't possible as Mr T couldn't return the TV as he had arranged for it to be disposed of, so the appropriate remedy would be damages. This would normally be calculated based on either the cost of repair or the difference in value between what had been contracted for and what had actually been received. It would also be reasonable to include in any award the cost to Mr T of proving the defects (i.e. the cost of the report from the manufacturer).
- I noted the cost of repairs was uncertain. The manufacturer had indicated it could be less, or much more, than a figure of £636 it had suggested in its report. Given the TV had been disposed of and would not be repaired, I thought it fairer if the redress represented the difference in value. Given the TV had been purchased at auction, and a price achieved at auction is a good indicator of market value, I considered the £1,550 Mr T had agreed to pay for it was its value at the time, as advertised. It was less easy to work out how much it would have been worth in a broken state. After carrying out research on the same marketplace Mr T had used, I estimated the TV in a broken state would have been worth about £600, making the difference in value £950.
- I observed that requiring Barclays to pay £950 to Mr T for a TV which had cost him £1,550 and which he no longer possessed, did seem to leave him out of pocket. However, it had ultimately been his decision to dispose of it without being paid for it, and that wasn't something I thought it would be reasonable to hold the seller or Barclays for.

I therefore said that I was minded to conclude Barclays had not acted fairly in declining Mr T's section 75 claim, and that I intended to direct Barclays to pay Mr T £950 plus compensatory interest in respect of the damage to the TV, £350 plus compensatory interest

to cover the cost of the manufacturer's report, and £100 compensation.

I invited both parties to the complaint to let me have any further evidence or arguments they wanted me to consider. Barclays accepted my provisional decision. Mr T appeared broadly to agree with parts of the provisional decision but did not think the level of compensation was in the right place. I think it would be fair to say, in summary, that his view was that he had been put to considerable inconvenience and had to expend a lot of effort in making his case, and things had taken far too long to resolve.

The case has now been returned 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 appears to be no fundamental disagreement now on whether, and to what extent, Barclays is liable under section 75 of the CCA for the seller supplying Mr T with a TV which was damaged on delivery. At the very least, neither side has developed any new arguments and so I make no change to my findings on this point.

I will note here, that between me issuing my provisional decision and coming to write this final decision, I became aware of a recent court judgment which appeared to be relevant to the question of Barclays' potential liability under section 75 of the CCA. Having now had the opportunity to consider this judgment carefully, and noting that Barclays has also not sought to challenge my provisional findings, I see no reason to depart from those findings.

This means I find that Barclays should have honoured Mr T's section 75 claim in respect of the supply of the TV, for the same reasons and in the same way outlined in my summarised provisional findings.

On the matter of compensation for Mr T's non-financial loss, I do understand Mr T's point that the whole saga of buying the TV and all the problems which followed, has been very protracted. After suffering the initial disappointment of receiving a broken TV, he's been through the marketplace's disputes process, dealt with the manufacturer, unsuccessfully claimed against Barclays, and then waited a long time for a decision from this service.

The main point I would make is that Barclays is not responsible for all of those things – its mistake was to decline to honour the section 75 claim. I'm unable to hold it responsible for delays which were caused by other parties, or any potential unfair decision or misleading communication from the marketplace. Barclays' initial decision to decline Mr T's claim was not obviously wrong based on the evidence it had at the time. Further investigation by our case handler uncovered more information about the way the transaction was processed, and this revealed that the claim should have been honoured.

In light of the above, my decision is not to increase the amount of compensation I will award for distress and inconvenience.

My final decision

For the reasons explained above (including the summary of my provisional decision), I uphold Mr T's complaint and direct Barclays Bank UK PLC to take the following actions:

- 1) Pay Mr T £950 in respect of the damage to the TV.

- 2) Pay Mr T £350 to reimburse him for the report he commissioned from the TV manufacturer.
- 3) Pay 8% simple interest per year* on the above amounts, for 1) calculated from the date the broken TV was received (20 July 2020), for 2) calculated from the date of the payment (understood to be 12 August 2020).
- 4) Pay Mr T £100 compensation to the extent that it has not already done so.

*If Barclays Bank UK PLC considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr T how much tax it's taken off. It should also give Mr T a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Mr T has questioned the deduction of tax as outlined above. It is not for me to decide what Mr T's tax liability is, but the bank may be *legally* required to deduct tax from the interest element of his compensation and remit this directly to HM Revenue & Customs. Mr T may find our guidance on tax on compensation helpful¹, as well as the relevant guidance from the tax authorities.²

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 24 April 2023.

Will Culley
Ombudsman

¹ <https://www.financial-ombudsman.org.uk/consumers/expect/tax> (retrieved 24 March 2023)

² <https://www.gov.uk/hmrc-internal-manuals/savings-and-investment-manual/saim9115> (retrieved 24 March 2023)