

The complaint

Mr F complains Barclays Bank PLC trading as Barclaycard has treated him unfairly in relation to a payment he made on his credit card to purchase some land.

What happened

I issued a provisional decision on this case on 7 February 2023 in which I set out the background and explained my findings to both parties, so I will summarise the surrounding circumstances only briefly:

- Mr F used his Barclays credit card in January 2021 to pay £10,000 to an auction company ("FP"), covering a £7,000 deposit for a plot of land he'd agreed to buy for £70,000, and a £3,000 admin fee. The vendor of the land was not FP.
- The property had been advertised for sale with an incorrect title plan which showed the area of land as being larger than it actually was, or had been intended to be offered for sale. This came to light during the process of completing the purchase and Mr F was given the option by the vendor of pulling out of the sale and getting his deposit back, or proceeding. Mr F chose to pull out.
- FP had been holding the deposit but didn't return it. When Mr F asked it to refund the money it apparently just told him it was non-refundable.
- Mr F sought to dispute the £10,000 payment with Barclays in late February 2021. The bank asked him to provide more information, which he did. He also received a letter which said interest was being suspended. A few months later he was told by Barclays that it couldn't help him because his purchase wasn't covered by Section 75 of the Consumer Credit Act 1974 ("CCA") because of the price of the property he'd been trying to buy.

In my provisional decision I noted that Mr F had, while his case had been with the Financial Ombudsman Service, received a refund of the £10,000 from FP. He said he's incurred legal costs in recovering the money and he wanted Barclays to reimburse him for this. I went on to make the following provisional findings:

- That when a person pays for goods or services using a credit card and something goes wrong with the purchase, their card issuer may have an obligation to consider either a claim under the relevant sections of the CCA, or they may be able to help via the interbank dispute resolution scheme operated by the card scheme ("chargeback"). I noted that chargebacks were not a way of determining a person's legal rights, and were just a way of resolving disputes according to the rules of the relevant card scheme.
- That, on the balance of probabilities, it had been the vendor who had been responsible for the incorrect title plan being used to advertise the land. This was firstly because although the vendor claimed FP had failed to use an updated title plan when marketing the plot, this title plan was dated after the sale had been made. And

secondly, as FP was the vendor's agent it's possible the vendor would have been considered legally responsible for FP providing incorrect information in any event.

- Mr F wasn't able to make a valid claim against Barclays under the relevant sections of the CCA (sections 56 and 75) because to do so he needed to have a claim for breach of contract or misrepresentation against the company *he'd paid* using his credit card. Mr F had paid FP, but his potential claim was against the vendor, meaning he couldn't have a valid claim against Barclays.
- As a matter of good practice, I'd have expected Barclays to attempt a chargeback where this would have had a reasonable prospect of succeeding. I had read the relevant rules and guidance issued by the card scheme (Visa) and these indicated Mr F had provided enough information for Barclays to attempt a chargeback on the grounds that what Mr F had purchased was "not as described".
- I noted chargebacks were not guaranteed to succeed and from what we knew of FP's attitude to providing a refund, it would probably have tried to fight the chargeback on the grounds that the money paid was non-refundable. However, guidance from the card scheme suggested that reliance on a refund policy was no defence to a chargeback brought on the grounds that something was not as described. So I thought it would have been difficult for FP to mount a valid defence.
- While Barclays had sought to argue that in its experience a chargeback in this situation wouldn't have been successful, I thought this was too vague an argument to be persuasive. I thought there was a reasonable prospect of success so Barclays should have attempted a chargeback.
- This meant Mr F had been denied the opportunity of obtaining a refund via a chargeback. He would not have had to pay interest on the £10,000 for as long had the bank attempted a chargeback and it had been successful. I thought it would be fair and reasonable that Barclays refunded any interest, fees or charges associated with the £10,000 transaction, dating back to the date Mr F initially disputed the amount with the bank.
- I did not think it was reasonable for Barclays to cover Mr F's legal costs. Ultimately, the underlying dispute had been between Mr F, the vendor and FP. Mr F's costs arose from the positions taken by the parties to that dispute (which didn't involve Barclays). Had the bank carried out a successful chargeback it wouldn't necessarily have extinguished the underlying dispute. Mr F could have found himself pursued by FP or the vendor had they felt he legally owed them money which had been wrongly (in their eyes) refunded via a chargeback. And so he might have been put to further expense anyway.

I asked both parties to the complaint to provide any further submissions by 21 February 2023.

Mr F said he would accept the direction I'd made in the decision for Barclays to refund interest, and provided details of interest he had been charged on his account, which he said came to about £630. Barclays hasn't responded specifically to the provisional decision, but it did email our investigator with an explanation of how it deals with suspensions of interest when a customer wants to dispute a transaction.

As the deadline for further submissions has passed the case has been returned to me to review.

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.

Neither party to the complaint has submitted further arguments for me to consider, so it follows that I see no reason to depart from my provisional findings as summarised above.

This means I will be upholding Mr F's complaint on the grounds that Barclays should have attempted a chargeback but did not, and this deprived Mr F of an opportunity to receive a refund of the £10,000 payment far sooner. To put things right, it will need to refund all interest, fees and charges associated with the transaction dating back to when Mr F first raised the dispute over it.

Because Mr F will be getting a substantial refund of interest anyway, I don't consider there is a need for me to determine whether or not the bank promised to suspend interest on the transaction (or on what terms or for how long). Mr F has helpfully summarised interest that he's paid on the credit card, but Barclays will be in a position to verify the exact amounts charged on the transaction, so I will leave it up to the bank to implement my directions accurately.

My final decision

For the reasons explained above and in the summary of my provisional findings, I uphold Mr F's complaint and direct Barclays Bank UK Plc trading as Barclaycard to:

- A) Refund all interest, fees and charges associated with the £10,000 payment Mr F made to FP in January 2021, dated from the date Mr F notified the bank that he was looking to dispute the payment, to the date this complaint is settled.
- B) If, after providing the refund in A), Mr F would be left with a credit balance on his credit card, Barclays must arrange for that credit balance to be transferred to a current account in Mr F's name.
- C) If, after providing the refund in A), Mr F has a debit balance, some or all of which relates to the original £10,000 payment, then for the avoidance of doubt Barclays can continue to charge interest on this in line with the terms and conditions of the account. My direction to refund interest applies only up to the date the complaint is settled, it is not an ongoing waiver.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 23 March 2023.

Will Culley
Ombudsman