

The complaint

A company, which I'll refer to as O, complains that Barclays Bank Plc didn't defend chargebacks raised against it, which resulted in a default being registered against it.

O is represented by one of its directors, Mrs P.

What happened

O is a merchant. In July 2020, three chargebacks totalling £4,270 were raised against O in relation to a booking for an event that was due to take place in May 2020.

Mrs P submitted O's defence explaining that O's client had accepted its terms and conditions when they booked the event and it was clearly detailed that the booking was non-refundable. Mrs P also detailed her efforts to offer an alternative date for the event.

There were administrative issues with the chargebacks defence being supplied, but this was eventually rectified, and Barclays received O's defence. However, Barclays didn't defend the chargebacks as they said the defence was insufficient, so O was not re-credited for the chargebacks.

Mrs P cancelled O's direct debit to Barclays and made manual payments between August and November 2020, so Barclays were unable to collect the outstanding £2,000 that had been raised as chargebacks.

Mrs P complained to Barclays on O's behalf in October 2020. She said she had tried to contact Barclays to discuss the matter on numerous occasions but to no avail. Mrs P agreed to one of the chargebacks and enclosed a cheque to cover it, however she disputed the other two chargebacks which totalled £2,000. She told Barclays the event was never going to go ahead due to a personal matter of O's clients' and asked for the matter to be settled. She also asked Barclays to terminate their contract with O.

Barclays apologised for the administrative difficulties O had had in responding to the chargeback and explained the reasons why they didn't defend the chargebacks. Barclays further apologised that the chargebacks were initially identified as fraud and explained that once it was confirmed that the transactions weren't fraudulent, the case was passed to their chargebacks team. They acknowledged that Mrs P had told them O's client was untruthful but explained that element was a civil matter and suggested O pursue it through the small claims court.

Barclays confirmed that the account had been closed at Mrs P's request on 6 November but that the remaining £2,000 debt on the account would need to be cleared. Barclays explained that if the debt was not paid it would be written off by their collections team which would affect O's credit file which is what ultimately happened here.

Mrs P was unhappy with Barclay's actions, so she brought O's complaint to us. She told us that a default had been registered against O which was affecting O from being able to borrow money. This was a particularly stressful time as there had been a fire which was affecting O's business further.

One of our investigators looked into the matter. He upheld the complaint as he said Barclays should've defended the chargebacks and this was ultimately what led to the default being recorded against O. He said that Barclays should remove the default and pay £200 to O for the inconvenience caused by the process.

Barclays disputed the outcome. They agreed to pay the £200 to O to settle the matter but said they accepted no liability for the chargebacks, or any inconvenience caused. They further explained that the only way the default could be removed was for the outstanding debt of £2,000 to be paid.

As an agreement could not be reached, the case was referred to me for a decision. Having reviewed the case, I issued a provisional decision on O's complaint earlier this month, setting out why I thought the complaint should be upheld in part. I said:

I'll begin by explaining that I can't intervene in the outcome of O's dispute with the cardholder. The chargeback process was run by the Card Scheme and operated according to the Card Scheme's rules. Barclays didn't operate the scheme and were not responsible for deciding whether the chargeback should be successful.

So, I'm not going to make any findings on whether the chargeback should have been raised and whether it should've been successful. What I can do is look at the actions of Barclays and whether they acted fairly once the chargeback was raised.

Barclays' actions in relation to the defence of the chargebacks

Mrs P submitted a defence on behalf of O, but Barclays chose not to defend the case as they said O's defence was insufficient. The terms and conditions of their merchant agreement with O allow them to do this if they think the chargeback is unlikely to be successful. Although Barclays aren't obliged to investigate the validity of any chargeback, we would think it reasonable for them to do so if there was a realistic chance of a successful outcome. So, I've considered the likelihood of the defence being successful.

The basis of O's defence was that its client accepted its terms and conditions, including the non-refundable clause if the cancellation wasn't as a result of O's actions. Mrs P explained that it had offered alternative dates to its client to reschedule.

Barclays told us they didn't defend the chargebacks as the defence was insufficient under the Card Scheme rules as there was no evidence that the terms and conditions had been read and accepted by the cardholder, even though O had supplied a copy of the booking form with details of its terms and conditions included.

Barclays are familiar with the Card Scheme's processes and the likelihood of whether a claim might succeed. In terms of cases where the acceptance of terms and conditions is used as a defence, VISA require the merchant to provide, at a minimum, a hyperlink to the terms and conditions at the point of sign off.

In this case there is no evidence that O met this criterion. On O's booking form there is a tick box at the end of the form which O's clients ticked to confirm they accepted its terms and conditions. This form was not completed in person, so the names of O's client are typed and there are no signatures on the form.

So, I agree that based on the defence provided by O it seems unlikely the Card Scheme would've ruled in their favour because of the acceptance process O had in place at the time of the sale. Barclays had the right not to defend the chargebacks and I can't see that they've acted unfairly here based on the evidence provided to them by O.

I've also considered the Competition and Markets Authority (CMA)'s stance on similar matters. The CMA published guidance around this time to help businesses treat their customers fairly regarding cancellations and refunds in response to the pandemic.

They said a contract would be considered to be 'frustrated' if it couldn't go ahead as agreed due to no fault of either party. So, if the contract is 'frustrated' it comes to an end and if customers have paid money in advance for services that they have not received, they will generally be entitled to a refund.

For most consumer contracts, the CMA would expect a consumer to be offered a full refund where they are prevented from receiving a service because laws in the UK or abroad have made it illegal to receive or use the service.

Also, in the CMA's view, rights to a refund will usually apply even where the business says part of the payment is a non-refundable deposit because the contract will have been frustrated and the terms which allow a business to provide no service but keep a consumer's money are likely to be considered "unfair".

Taking all of this into account, I don't think Barclays have done anything wrong in not defending the chargebacks.

Administrative issues

Barclays initially told O that the payments were being recalled due to fraudulent activity on its account. Barclays said that once it was established that the transactions were not fraudulent, they passed the case to the chargebacks team. In addition, there was a new email system for chargebacks due to the impact of the pandemic, and this caused some confusion for O.

I don't think Barclays were particularly clear in explaining to O what it needed to do or why the defence wouldn't be sufficient. I also think the initial discussion about fraudulent activity, although valid, confused the matter. As a result, there was confusion and inconvenience caused to O's directors. And to apologise for that, I think Barclays should pay £200 to O.

To be clear, I don't think it would've made a difference to the outcome of the defence if Barclays had been more specific about why the defence was insufficient, as I can see from the booking form that the system O had in place at that time was unlikely to have satisfied the rules of the Card Scheme.

Removing the default

Barclays' collections team wrote off the remaining £2,000 debt due on O's account after the account was closed in November 2020. As a result, a default was registered on O's credit file. I've already concluded that Barclays acted reasonably in respect of how the chargebacks were handled, so I won't be asking them to remove the default.

However, I have spoken to Barclays to see if there was a way to reduce the impact of the default on O's credit file. Barclays explained that O could still repay the debt so the default would show as settled on its credit file, but the default can't be removed as it was applied correctly.

I invited both parties to send me any further comments or evidence before I made a final decision.

Barclays responded to say they accepted the decision and agreed to pay £200 to O for the inconvenience their errors caused.

Mrs P said O didn't accept the decision. In summary, she said:

- What evidence can Barclays provide to show that they provided me with the information necessary to ensure we were able to meet this criterion and would comply with the card scheme processes?
- O's clients were untruthful about the reason for the chargeback and their dishonesty caused the fault, so the contract was not 'frustrated'.

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've carefully considered everything Mrs P has said, however, having done so, I've reached the same conclusion as I did in my provisional decision.

Mrs P has asked for evidence from Barclays to show that they provided O with the information necessary to ensure it was able to meet this criterion and comply with the card scheme rules. However, I don't think it was the responsibility of Barclays to ensure O's business processes adhered to each of the card scheme rules. So, I've looked to see that Barclays brought the risks associated with taking card payments to O's attention and I'm satisfied that they did.

The terms and conditions of the agreement between O and Barclays sets out the responsibilities of each party in relation to the chargeback process. Barclays have detailed what happens in the case of a chargeback, and have explained in section 4 of the Merchant terms and conditions document that "in some circumstances the card issuer or account provider will have the right under the scheme rules to refuse to settle a payment or to request a reimbursement of a payment which has already been settled".

It is the responsibility of the merchant (O) to understand the risks associated with accepting card payments and the risks of chargebacks. Barclays have brought these risks to O's attention and explained that any transaction they accept is at risk of a chargeback under the card scheme rules. So, I think Barclays have fulfilled their obligations in this respect and it is then the responsibility of the merchant to ensure their processes meet the rules of the card schemes.

Mrs P has also raised the matter of O's clients being untruthful about the reason for the chargeback. She said their dishonesty caused the fault, so the contract was not 'frustrated'. I can understand Mrs P's frustrations here. However, the issuing bank raised the chargeback on the grounds of services not being received - which they weren't. Barclay's role was to ensure the chargeback was processed in line with the terms and conditions of their agreement with O, along with the rules of the relevant card scheme. And this is what they

did. So, I can't say they acted unfairly or unreasonably here.

At the heart of this complaint is the impact of O's client's actions on O's business operations. I could only make a finding on that issue if I was to conclude that Barclays' actions contributed to the losses O has incurred. But I've not found that to be the case here. The ultimate loss has occurred because of the actions of the third party and not those of Barclays.

I know that O has experienced unforeseen difficulties since the default was registered which the default has magnified. I can understand the disappointment my decision will cause to O's directors, particularly as O has no contract with the issuing banks so it can't claim against them and the only other recourse is civil action against O's client.

However, as I've explained, I can only look at the actions of Barclays and I haven't found any evidence that Barclays acted unfairly or unreasonably in not defending the chargebacks.

Nonetheless, there were administrative issues that caused inconvenience to O during this process and to reflect this, I think Barclays should pay £200 to O.

My final decision

For the reasons I've given above and those detailed in my provisional decision, I uphold this complaint in part. I direct Barclays Bank Plc to pay £200 to O.

Under the rules of the Financial Ombudsman Service, I'm required to ask O to accept or reject my decision before 27 April 2023.

Tara Richardson
Ombudsman