

The complaint

Mr H complains Barclays Bank UK PLC trading as Barclaycard ("Barclays") treated him unfairly when he approached it for help with a dispute over a purchase he made on his credit card.

What happened

Mr H used his Barclays credit card on 24 February 2023 to purchase tickets for himself and his wife for a two-night professional wrestling event due to take place in the summer of the same year. Mr H purchased the tickets through a ticketing agent I will call "A".

The tickets Mr H bought were for both nights, in specific seats which were advertised as being premium ringside seats. The tickets for the first night cost £405 each, while the tickets for the second night (which was the main event) cost £810 each. The tickets for the second night also included the provision of a "commemorative chair" which Mr H understood he would be provided with on the night and be able to take home with him.

Overall, Mr H paid £2,430 for the tickets, but A also charged him a service fee of £127.56, a facility fee of £11, and a transaction fee of £2.50, for a total charge to his Barclays credit card of £2,571.06.

Mr H says that when he and his wife turned up for the first night, their seats were occupied by other individuals, and venue staff explained that the seats had been double-booked through an American company, "OL". Mr H says he and his wife were put in seats further away from the ring, which were on sale for £130 each.

On the second night, Mr H says he and his wife received the premium ringside seats shown on their tickets, but found a note sellotaped to the seats by the event promoter. The note explained that, in order to comply with UK laws, they were unable to provide the commemorative chairs on the night. The note went on to say that the chairs would be sent following the event, and if they hadn't heard anything by a certain date, to contact the promoter at a particular email address.

Mr H says he never received the chairs, nor any response from the promoter when he emailed to ask about their whereabouts.

In early July 2023, Mr H approached Barclays for help claiming a partial refund of £2,085. This, he reasoned, was the difference between what he had paid for, and what he had received. He said the commemorative chairs were worth at least £400 each on the secondary market. Barclays sent him some forms to complete, which he returned.

Barclays then attempted what is known as a "dispute" or "chargeback" against the transaction on either 29 or 30 August 2023. £2,085 was credited to his credit card account pending the outcome of the dispute, leaving a positive balance on the account.

On 31 August 2023, Mr H rang the bank to ask about having the positive balance transferred to his bank account. A member of staff arranged this for him, and Mr H says he was told the

dispute had been closed in his favour.

However, the dispute process was in fact still ongoing, and A was challenging Barclays' attempt to claim a refund for Mr H. Barclays was unconvinced by A's challenge, and pushed back with arguments of its own. A continued to refuse to accept the dispute, and at this point Barclays decided it couldn't pursue the matter any further. On 18 September 2023 the bank wrote to Mr H to say the chargeback had failed, and it was not liable to him under section 75 of the Consumer Credit Act 1974 ("CCA") because he had paid a ticket agent rather than the event provider directly. It said it would be taking back the £2,085 within 14 days, but would allow him to keep £500 of it "as a gesture".

This prompted a complaint from Mr H. Barclays provided its final response to the complaint on 4 October 2023, two days after it had reversed the temporary refund. I think it would be fair to summarise the bank's response as follows:

- It had no liability to Mr H under section 75 of the CCA. This was because section 75 only covered the responsibilities of the company Mr H had paid, which was A. Their job had been to supply the tickets, which they had. The problems Mr H had encountered were down to the promoter.
- It agreed it had provided poor customer service. It shouldn't have allowed the temporary refund to be moved from the credit card to Mr H's bank account – that wasn't in line with the bank's policies or processes. It also acknowledged there had been problems completing the dispute forms and providing incorrect information about what it could do to help him, and about the refund being permanent.
- It could not have pursued the chargeback any further, because of restrictions applied by Visa. The chargeback had failed.
- On top of the £500 it had allowed him to keep, it would pay him an additional £300 (to bring the total to £800 – which is what Mr H had said the two chairs were worth), and £150 in respect of its poor customer service.

Dissatisfied with this response, Mr H referred his complaint to the Financial Ombudsman Service for an independent assessment. One of our investigators looked into the matter. I could summarise his findings as follows:

- He was satisfied Barclays had handled the chargeback fairly, and considered his section 75 claim fairly.
- He would not have expected Barclays to continue pursuing the chargeback if it didn't appear to have a reasonable chance of succeeding. A had argued it had been responsible for supplying the tickets ordered – which it had – and the terms and conditions had suggested the promoter would have been responsible for double-booking. So it didn't seem likely that a chargeback would have succeeded and it therefore hadn't been unreasonable for Barclays not to pursue this further to "arbitration".
- A chargeback could not have been used to recover the value of the commemorative chairs as this was a consequential loss.
- In order to work out what Barclays was liable to Mr H for under section 75 of the CCA, it was necessary to look at the terms and conditions with A to see what A was responsible for. That was because Barclays could only be held liable for something A was responsible for, not the promoter.

- A's terms and conditions said that where changes were made to the seating by the promoter or venue, and the reassigned seat was of a lesser value than the one purchased, a partial refund would be given of the difference in price. Mr H had paid for seats worth £810 but put in seats worth £260, so he was entitled to the difference of £550. However, Barclays had given him £800, which was more than this.
- He couldn't find that A had been responsible contractually for the provision of the commemorative chairs, so Barclays couldn't be held liable under section 75 for the failure of the chairs to materialise.
- The £150 compensation offered by Barclays was sufficient. The bank had tried to get back Mr H's money, and it had given him £800 as a gesture of goodwill even though it was only liable to pay him £550. In light of this, it wouldn't be reasonable of them to pay him more than £150 for his distress and inconvenience.

Mr H disagreed with our investigator. He thought the £150 compensation figure was far too low, and a figure in excess of £1,000 would be fair. He said he'd wasted hours on the phone due to Barclays' poor customer service and misinformation, and had been caused large amounts of stress by suddenly having a big debt on his account as a result of the wrong information given and the bank's failure to follow its policy. He said that in the end he had borrowed money from a friend to pay it back.

As no agreement was reached, the case has been passed 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.

When a consumer buys goods or services using a credit card, and something goes wrong with the purchase, they can approach their card issuer for assistance. The card issuer may be able to help in obtaining a refund of any card payments made via a chargeback, or it may need to honour a claim under section 75 of the CCA. I'll consider each of these avenues in turn, before thinking about the matter of the bank's customer service.

Chargeback

A chargeback, which is sometimes also referred to as a "dispute", is a process for disputing payments made on debit, credit and certain other types of plastic card. The process is governed and administered by the card scheme whose logo appears on the card in question (Visa in this case).

The card scheme makes the rules covering things such as the types of scenario which are eligible for a chargeback, the kind of evidence which needs to be submitted, and various deadlines at different stages of the process.

Chargebacks are not guaranteed to succeed, and a consumer is not able to demand that their card issuer attempt one. However, as a matter of good practice I would expect a card issuer to attempt a chargeback where to do so would be in line with the card scheme rules and have a reasonable chance of succeeding. I would also expect a card issuer to conduct the chargeback process in a competent way, without making errors. A chargeback can be defended or resisted by the party which originally received the payment, if they don't think the claim for a refund is valid. If neither side will back down, then the card scheme itself can be asked to make a decision on the dispute, in a process called arbitration.

In Mr H's case, Barclays did attempt a chargeback. This was on the grounds that Mr H didn't receive the service and goods he'd paid for, and in fact received something else (the wrong seats on the first night, and no commemorative chairs on the second). A didn't agree with the chargeback, arguing that it had given Mr H the tickets he'd ordered, and providing proof that he'd attended both nights. Barclays says that it felt A's response had missed the point and was non-compliant with Visa's rules, and it escalated the chargeback to the "pre-arbitration" stage. I have not seen the text of A's reply to Barclays' second attempt, but the bank has said A refused to agree to provide a refund. Given A's attitude to the initial chargeback attempt, I don't doubt it continued to refuse to entertain giving any kind of refund.

At this stage, Barclays had the option of escalating the matter further to arbitration, or conceding. It chose to concede and pay £500 to Mr H out of its own pocket, so to speak. It then paid him another £300 after he complained about the decision. Should it have done more? Having thought carefully about the situation, I think Barclays probably did still have a reasonable chance of succeeding at arbitration, but that it would have got back less than it subsequently decided to pay Mr H. So ultimately, Mr H hasn't lost out as a result of the bank not pursuing the matter further. I'll explain why.

It's worth me mentioning at this point that it's never possible to say with certainty what decision Visa would have made, had Barclays taken the chargeback to arbitration. However, on the balance of probabilities I think the best outcome is likely to have been that Mr H received back the difference in value between the seats he paid for on the first night, and the seats he got. This was £550. Although Barclays only gave Mr H £500 initially, it did increase this to £800 later. Like our investigator, I don't think a chargeback would have succeeded in claiming back anything in respect of the commemorative chairs, and this is because the chairs did not have an itemised value on the booking. I think it's very unlikely that a claim would have been successful for what Mr H thought he might be able to sell the chairs for after the event.

Section 75 of the CCA

Section 75 of the CCA allows consumers who have purchased goods or services using a credit card, to claim against their credit card issuer in respect of any breach of contract or misrepresentation by the supplier of the goods or services, subject to certain technical conditions being met.

One of the technical conditions is the necessity for there to be what is called a debtor-creditor-supplier ("DCS") agreement in place. This is a fairly complex legal concept, but in most cases it can be simplified to the following: it means that the person who owes the debt on the credit card account needs to have used their credit card to pay a company they have a claim against for breach of contract or misrepresentation.

In this case, Mr H is the debtor and he used his credit card to pay A. So Barclays can be found liable, under section 75, for any breach of contract or misrepresentation by A. Things are made complicated in Mr H's case because A wasn't the company putting on the events – the wrestling promoter ("W") was. So if something went wrong which was W's responsibility, then Barclays wouldn't be liable to Mr H for that under section 75.

Our investigator recognised this, and examined A's terms and conditions to try to work out what they were contractually responsible to Mr H for. I've carried out the same exercise, as well as considering general legal concepts which may apply, along with the events Mr H says occurred, and have concluded the following:

- A was appointed by W as its ticket agent for the two event nights. A was authorised

by W to sell tickets for the event which they (W) had chosen to list for sale.

- A was *not* responsible for providing the commemorative chairs. That was W's responsibility as part of putting on the event, so it isn't something Mr H could find Barclays liable for under section 75 of the CCA.
- A was responsible for issuing to Mr H the same tickets he had booked. A had done this, so there was no breach of contract in respect of this responsibility.
- It's not clear exactly whether A or W (or possibly OL) was responsible for the double-booking of Mr H's seats on the first night. What happened could conceivably have been caused by an error from any one of these three companies.
- Even if the error had been made by A, under the law of agency, an agent's principal (W in this case) is normally legally responsible for the acts or omissions of its agent when carrying out the job it has been authorised to do. So it's possible A would not be legally liable to Mr H anyway, even if it had been responsible for the double booking.
- The part of A's terms and conditions our investigator identified as entitling Mr H to receive a partial refund from A if he was reassigned to lower value seats, applied to sales in the USA only, and not in the UK. The UK terms and conditions contained no such provision, except for where an event had been rescheduled, which wasn't applicable here.

So what does all of this mean? It means I think it's unlikely Mr H had a claim against A for a breach of contract or misrepresentation, which means he has no claim against Barclays under section 75 of the CCA either. The only way I think he could have had such a claim would be if it was proven that A had been responsible for the double booking, and A's agency agreement with W passed the responsibility on to A for the error. None of this has been proven. If it was, then I think Mr H is likely to have had a claim for the difference in value between the seats he paid for and the ones he got, which is £550.

However, this is academic as Barclays has already refunded £800 as a gesture of goodwill, which is £250 in excess of the maximum amount I think Mr H could have claimed under section 75 of the CCA. It follows that I don't find it would be fair and reasonable for the bank to increase its offer as a result of any potential liability it may have under section 75.

I will say here that I completely understand why Mr H is seeking redress for what happened. He was entitled to receive the premium ringside seats he'd paid for, and the commemorative chairs included in the package. However, I'm looking strictly at what responsibility Barclays had to Mr H to provide a refund or reimbursement. For the reasons explained above, I think its responsibility was limited, and the most it could have claimed back via the chargeback process, or been expected to pay in connection with its liabilities under section 75 of the CCA, was £550.

Customer Service

I think Barclays acknowledges that the customer service it provided after Mr H approached it for assistance, was very disappointing.

Incorrect information was given on several occasions and the bank failed to follow its own procedures, allowing Mr H to transfer money to his bank account which was still subject to the dispute with A. He subsequently began spending the money without realising that it might not remain his to spend, and was understandably shocked when he was told it would

be taken back (albeit he would be allowed to keep £500).

Mr H has said he was very distressed by how things were handled by Barclays, and suffered a lot of wasted time. I accept Mr H will have been affected by the bank's poor customer service, which brings me to the question of whether the £150 offered by the bank is fair and reasonable in all the circumstances of the case.

Personally, I think £150 is not a very high figure in the circumstances, taking into account the impact on Mr H. But like our investigator, I note the bank has also paid £800 to Mr H, which I don't necessarily think it was liable to pay him. The most I think it ought to have paid him in connection with the chargeback or section 75 claim, was £550. So, it has overpaid him by at least £250.

I appreciate there's an argument to be made, that the amount offered in respect of customer service, and the amount offered in respect of the disputed payment to A, should be kept separate. However, I'm also mindful that sections 228 and 229 of the Financial Services and Markets Act 2000, which governs the Financial Ombudsman Service, says that I must determine a complaint "...by reference to what is, in [my] opinion, fair and reasonable in all the circumstances of the case", and that any award I make should be "...of such amount [as I] consider fair compensation for loss or damage..."

I think it's right to take into account the fact that Barclays has paid significant amounts to Mr H that it was not technically liable to pay to him. I think these goodwill payments have to be factored into any decision about what is fair and reasonable in all the circumstances. In light of this, I think the overall *package* of compensation paid to Mr H by Barclays is fair and reasonable. I do not think it would be fair to require the bank to make any further payment.

My final decision

For the reasons explained above, I do not uphold Mr H's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 6 September 2024.

Will Culley
Ombudsman