

The complaint

Mrs R and Mr R complain about the way Barclays Bank UK PLC handled a chargeback claim.

What happened

The background facts are well known to the parties so I will only cover these briefly.

Mrs R and Mr R purchased furniture from a retailer ('the supplier') using their Barclays debit card. However, they were unhappy with the quality and after some initial repairs eventually raised a dispute with Barclays for a refund. It raised a chargeback but this was unsuccessful.

Mrs R and Mr R are unhappy with the way Barclays has handled the chargeback. They say that Barclays had misinformed them about the process, not responded to correspondence, and had not been clear about what information it had forwarded on to support their case - in particular an additional expert report they had paid for ('Report A').

Barclays accepted that it had not handled the claim well but said it would not issue a refund as the chargeback had now been declined.

Our investigator looked into the complaint about the claim handling. She agreed that Barclays had not handled things well and said it should pay £100 compensation for this. However, she did not think that it had to refund Mrs R and Mr R for the furniture taking into account the particular circumstances of the case and the nature of the chargeback scheme.

Mrs R and Mr R have asked for the matter to be considered by an ombudsman. In summary, they point out that it appears Barclays did not forward Report A to the supplier as part of the chargeback process - which is negligent and had this happened (and the full facts been considered) the outcome of the claim '*should have been somewhat different*'. They also note that dealing with the claim has caused a huge amount of stress and the compensation recommended by the investigator to date is totally inadequate as it does not even cover the cost of Report A which was £250.

I issued a provisional decision on this case which said:

I have considered the information submitted by the parties but I won't be commenting on it all- only what I consider to be key. This reflects my role in resolving disputes informally.

I am sorry to hear about Mrs R and Mr R's dissatisfaction with the furniture. However, it is worth noting that my role here is to look at Barclays actions – not the supplier. In that respect I consider the relevant card protections around the chargeback scheme to be relevant here. So in considering what is fair and reasonable I have focused on how it handled the chargeback claim.

I think it is worth pointing out at this early stage that although I am issuing a provisional decision and increasing the compensation payable by Barclays— I am ultimately not directing Barclays to pay a refund for the furniture. I will explain more about this in due course.

I note Mrs R and Mr R have referred to the provisions of the Consumer Rights Act 2015, for example in relation to how they don't have to accept the supplier's offer of repair and can ask for a refund. However, the chargeback scheme is not subject to these legal provisions. Chargeback is not a legal right but a commercial scheme subject to the rules set down by the card scheme (which I believe in this case is VISA). So I won't be referring to the Consumer Rights Act 2015 here. However, I have considered the relevant chargeback provision relating to goods which is 'Not as Described or Defective Merchandise/Services'.

Raising a chargeback is not compulsory but I consider it good practice where there is a reasonable prospect of success. I note here that Barclays did attempt a chargeback and then re-presented it when the merchant defended it. However, it then appears to have discontinued the chargeback on receipt of a second defence from the merchant. The next stage it could have gone to was arbitration where VISA decide who wins the dispute.

For me, the key issue here appears to be that Mrs R and Mr R believe Barclays did not provide follow up information, namely Report A, to the supplier when it re-presented the chargeback. Nor did it properly consider this itself when deciding to discontinue things.

Whether Report A was submitted to the supplier is somewhat unclear still. Where things are unclear I make my findings on the balance of probabilities.

I can see Mrs R and Mr R appeared to supply Report A to Barclays as an attachment to their letter of response (dated 2 May 2022) to the supplier's initial chargeback defence. Barclays in its initial submission to this service claims that this response was attached to the representment of the claim. However, on further enquiry it can't seem to produce a copy of the Report A and only appears to have the cover letter dated 2 May 2022. It has also sent a rather vague response recently which could be interpreted to mean it did or didn't send the report.

On balance I think the supplier received at least the letter dated 2 May 2022 outlining Mrs R and Mr R's points of contention (including disclosure of the existence of Report A). As this is what appeared to be the basis for the re-presentment and the supplier coming back with another defence. But, as I have said, it is unclear if Report A was attached to the letter. From Barclay's unclear position and inability to locate a copy I am willing to accept that the letter was likely sent to the supplier without it.

However, even if I accept that Barclays made a mistake in not forwarding on Report A I need to consider the likely impact this had on things in any event. Firstly, I think it unlikely that sight of the report would have caused the supplier to change its stance here and offer a full refund. Its stance from an early stage had been that the furniture was not faulty and it based this on an expert report it had commissioned. It appears that at most it was willing to perform goodwill repairs. I also note that the letter of response from Mrs R and Mr R, which on balance I think the supplier received, quoted the key findings of said report – yet the supplier was unwilling to change its position on a refund. So I don't think sight of the report would likely have changed things here.

Therefore, I think Barclays would have still been put in a position to decide if the matter should be pushed to arbitration. Based on what I have said below I think it is arguable as to whether Barclays should have pushed it further. However, even if it could be argued they should have I don't think it changes things here. The outcome of an arbitration is not certain

as it is based on a decision by a third party card scheme. And I note the case here is a robustly contested dispute on both sides – with the supplier having produced its own expert report saying the sofa isn't faulty and Mrs R and Mr R producing their report saying otherwise. While a dispute of this nature might be well suited to court, the chargeback scheme is not able to compel experts for cross examination as to why their findings differ.

Further doubts about the success of the chargeback are also introduced because it appears that the supplier was open to goodwill repairs. The rules require the parties to sort things out between themselves and it is difficult to say the scheme would have granted a refund in these circumstances. As I have already said – the Consumer Rights Act 2015 doesn't apply here to allow Mrs R and Mr R to enforce certain remedies that they prefer.

So all things considered (and noting that Mrs R and Mr R can still pursue the matter in court if they wish) I don't think it fair here to make Barclays issue a refund for the furniture. However, I do think Mrs R and Mr R deserve compensation for the way things were handled.

Customer service

Barclays has not been clear about what it did with Report A during the chargeback process. And I think this has caused immense frustration to Mrs R and Mr R who appear to have gone out of their way to get a costly report, yet they were not afforded clarity about whether it was used as intended. I note they can still make use of this report if they go to court, but this does not nullify the frustration caused here.

Furthermore, Barclays appears to accept that some of its communication led Mrs R and Mr R to believe that it had pushed the matter to arbitration – when it had actually made the decision to discontinue things after the second presentment. This no doubt has caused an additional layer of frustration and confusion about the process.

I also note that Mrs R and Mr R say that they felt Barclays general communication was poor – and they didn't always get a response from it to their letters (such as when they submitted more information). Barclays appears to accept that letters were not acknowledged as they should have been.

Compensation is not a science, but in deciding what is fair I take into account the guidance on our website and the particular circumstances here. In mitigation I note that Barclays has apologised for some of its failings. I also note that while the customer service issues would have caused a lot of frustration – there will be a significant element of disappointment due to the actions of the supplier and the outcome of the claim itself.

After considering this carefully I think the level of distress and inconvenience should be more than £100. I think Barclays has shown a fundamental lack of clarity around the process it followed and the handling of evidence. I consider its actions have caused more than everyday levels of stress and inconvenience, and caused distress lasting over a notable period of time. Overall I think £300 is a fairer award of compensation in the circumstances.

I appreciate my award is small compared to the amount claimed via chargeback. However, as I have said I don't think it fair to make Barclays pay this here. Mrs R and Mr R will still be free to consider other options against the supplier – such as court. However, this will be a decision for them to make along with appropriate legal advice.

My provisional decision

I partly uphold this complaint and direct Barclays Bank UK PLC to pay Mrs R and Mr R £300 in compensation for the distress and inconvenience caused by the way it handled the dispute.

Mrs R and Mr R responded to clarify the history and nature of the three reports carried out on the furniture. And to also point out that the offer of repair was only made if they sourced an independent company themselves (which caused them warranty concerns). They also say, in summary:

- They did forward Report A on to Barclays with their letter and it appears that Barclay's failed to forward that on to the merchant; and
- the view that the report would be unlikely to change the supplier's stance is untested – and their cover letter of response merely quoted the report key findings – they believe the supplier would have been unable to robustly dispute the Report A.

Barclays says that previous information indicating that Report A was not forwarded to the supplier is incorrect. It has sent updated system evidence of the dispute claim information showing two documents were uploaded to the system for Mrs R and Mr R. It says these were attached to the online chargeback claim and supports that the correct process was followed and in a timely manner.

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 thank the parties for the further information and evidence. As reflects my informal role I will not be commenting on everything only the matters I consider to be key.

I note Mrs R and Mr R have clarified the background of all the reports involved here. However, nothing they have said conflicts with my previous understanding of the case and background facts.

I note that the parties are still disputing whether Report A was or wasn't forwarded on to the supplier. I don't necessarily think the new information from Barclays is conclusive. However, I don't consider it necessary to dwell on this because as I have said in my provisional decision – I don't think Barclays failure to send Report A on as part of the chargeback representment (if that is what occurred) has caused Mrs R and Mr R a financial loss in any event.

I know that Mrs R and Mr R view my findings on this point as 'untested'. However, the nature of the situation is that no one knows for certain (if accepted that it wasn't sent) whether Report A would have made a difference. My role is to decide things on the balance of probabilities. For emphasis I stand by what I said in the provisional decision about the chargeback and why it would not be fair to refund Mrs R and Mr R for the furniture even if Barclays had made a mistake in not attaching Report A. I copy the relevant sections for emphasis here:

However, even if I accept that Barclays made a mistake in not forwarding on Report A I need to consider the likely impact this had on things in any event. Firstly, I think it unlikely that sight of the report would have caused the supplier to change its stance here and offer a full refund. Its stance from an early stage had been that the furniture

was not faulty and it based this on an expert report it had commissioned. It appears that at most it was willing to perform goodwill repairs. I also note that the letter of response from Mrs R and Mr R, which on balance I think the supplier received, quoted the key findings of said report – yet the supplier was unwilling to change its position on a refund. So I don't think sight of the report would likely have changed things here.

Therefore, I think Barclays would have still been put in a position to decide if the matter should be pushed to arbitration. Based on what I have said below I think it is arguable as to whether Barclays should have pushed it further. However, even if it could be argued they should have I don't think it changes things here. The outcome of an arbitration is not certain as it is based on a decision by a third party card scheme. And I note the case here is a robustly contested dispute on both sides – with the supplier having produced its own expert report saying the sofa isn't faulty and Mrs R and Mr R producing their report saying otherwise. While a dispute of this nature might be well suited to court, the chargeback scheme is not able to compel experts for cross examination as to why their findings differ.

Further doubts about the success of the chargeback are also introduced because it appears that the supplier was open to goodwill repairs. The rules require the parties to sort things out between themselves and it is difficult to say the scheme would have granted a refund in these circumstances. As I have already said – the Consumer Rights Act 2015 doesn't apply here to allow Mrs R and Mr R to enforce certain remedies that they prefer.

For completeness I do note what Mrs R and Mr R have said about the nature of the offer of repair. However, there was still an offer to sort things out and I don't think the chargeback rules are prescriptive enough in this regard to say that Mrs R and Mr R's warranty concerns would have been a factor in preventing the chargeback from failing. And although they have said their cover letter didn't contain all the details of the Report A it did contain the key findings – and I think those were the crucial elements here – so I don't think it is fair to conclude that sight of Report A vs the cover letter likely would change the supplier's stance here.

I maintain that on balance I don't consider that an error by Barclays (if that were the case) in not attaching the Report A to the chargeback warrants a full refund here. However, as I have already said I think Barclays customer service could have been better in the way it handled the chargeback.

Barclays has asked if its latest information and new evidence changes my stance on redress for distress and inconvenience. It doesn't – because whether it transpires Report A was sent or not my award was for the customer service received. Ultimately, I am still satisfied that Barclays has not been clear about Report A or other things while it carried out the chargeback process which caused Mrs R and Mr R distress and inconvenience. So my award is unchanged.

Putting things right

Barclays should put things right as I have set out below for the reasons given here (and incorporating my provisional findings as set out above).

My final decision

I partly uphold this complaint and direct Barclays Bank UK PLC to pay Mrs R and Mr R £300 in compensation for the distress and inconvenience caused by the way it handled the dispute.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs R and Mr R to accept or reject my decision before 12 March 2024.

Mark Lancod
Ombudsman