

The complaint

Mr S complains about how Barclays Bank UK PLC handled a claim he made to it.

What happened

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

Mr S purchased home heating fixtures from a supplier using his debit card. He says they were not delivered and he wants a refund.

The supplier would not issue a refund so Mr S went to Barclays to raise a dispute.

Barclays raised a chargeback for Mr S. However, it eventually explained to him that it was unable to recover his disputed payment. Mr S is unhappy with this, he wants Barclays to pay out for the chargeback claim.

Our investigator did not uphold this complaint. Mr S has asked for the matter to be looked at again by an ombudsman.

I issued a provisional decision on this case which said:

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I have considered the evidence on this case but I will only comment on the matters that are key. This reflects my role in resolving disputes informally.

It is important to note here that Barclays is not the supplier of goods – so in deciding what is fair and reasonable I consider its role as a provider of financial services only. In that respect I note as Mr S used a debit card to make the purchase the chargeback scheme is particularly relevant here. Therefore, I have focused on this in deciding if Barclays has acted fairly.

Chargeback is not a legal right but is a dispute resolution process. It is subject to certain rules as laid down by the card scheme. In this case I understand the VISA chargeback scheme is relevant, so I have considered this when deciding what is fair.

While chargeback is not guaranteed to succeed it is often good practice to attempt one and continue this where there is a reasonable prospect of success. In this case I can see that Barclays did attempt a chargeback for Mr S. It isn't entirely clear what reason code it used to do so but Mr S was clear that he was raising his dispute on the basis that the goods were 'never delivered'. So the VISA reason code relating to merchandise not being received would appear the one that is relevant and applicable here.

However, it appears the supplier defended the chargeback and provided information pointing out the following:

- *Mr S's order was classed as 'bespoke' – it cannot resell the goods and it should not be faced with substantial losses because a customer has changed their mind;*
- *Mr S entered into a legally binding contract that cannot be cancelled or amended; and*
- *it notified Mr S on 11/11/22 that the order was available for immediate delivery on 18/11/22.*

Barclays appears to have discontinued the chargeback after the supplier raised its defence. It wrote to Mr S to say it had not been successful.

However, I am not persuaded that Barclays acted fairly in discontinuing the chargeback here. From the information I have seen from Mr S's correspondence with the supplier when it was unable to deliver to him on 1/11/22 (citing an issue with the courier) it then 'Guaranteed' (in writing) it would deliver to him on the 4/11/22. When this did not happen it apologised again and then once again 'Guaranteed' it would deliver to him on the 10/11/22. It is clear from Mr S's correspondence that this delivery didn't take place either and he then asked for a refund but didn't appear to get a response from the supplier.

I don't see where the supplier provided evidence to Barclays showing that it was able to deliver the goods to Mr S on the 18/11/22 (and that it communicated this to him). But in any event – it was quite clear from the evidence available that it had already failed to meet two guaranteed delivery dates previously. From the evidence I have seen I believe it would have been clear to Barclays that it would still be able to satisfy the requirement of the chargeback rule for goods not received by showing 'Merchandise was not received by the expected date/time'.

I know that Barclays has cited the supplier's defence about the contract not being one that can be cancelled due to the bespoke nature of the goods. But it should have also been reasonably clear to Barclays that this defence is not directly relevant to the chargeback Mr S raised which was for merchandise not received. The supplier also underlined the losses it would incur which is also not applicable to the chargeback rule here. Furthermore, it said the customer had 'changed their mind', but this wasn't accurate as from the evidence I have seen it was clear Mr S wanted a refund because he was upset that multiple delivery dates had not been met. Overall, the supplier's defence did not clearly or persuasively address the issues with missed delivery dates which were the subject matter of this chargeback dispute.

So in summary, due to the nature of the defence raised and the evidence available here I consider that the chargeback still had a reasonable prospect of success and should fairly have been continued by Barclays.

In order to decide what is fair I need to consider what is likely to have occurred had Barclays continued the dispute. I think it likely the supplier would have maintained its defence so the question is what would likely have occurred at arbitration. This isn't easy to answer as what the card scheme decides is down to its discretion. However, looking at what occurred here there is compelling evidence that the initial delivery date, and at least two 'guaranteed' delivery dates were not met by the supplier. So I don't see how a reasonable card scheme would likely have ruled against Mr S in light of the relevant chargeback rule here. Therefore, I think it fair to conclude that Barclays actions are more likely than not to have deprived Mr S of a refund here.

It appears Mr S had sent Barclays the correspondence showing the issues with delivery when he opened his dispute or reasonable enquiries would have revealed this in any event. However, in the interest of completeness it is also worth noting that although Barclays gave Mr S the opportunity to add further information when it wrote to him about the unsuccessful chargeback attempt – it didn't give him any detail about why the dispute had not succeeded or explain there was the possibility of taking it further – so I don't think it can rely on this letter to fairly mitigate its actions here.

Considering what is fair and reasonable and noting Mr S does not have the goods I think Barclays should refund Mr S the value of the transaction and include simple interest from the date it wrote to him with the declined claim (30 January 2023) to the date of settlement.

My provisional decision

I uphold this complaint and direct Barclays Bank UK PLC to pay £2,391.34 to Mr S including 8% simple yearly interest calculated from 30 January 2023 to the date of settlement.

If Barclays considers it should deduct tax from my interest award it should provide Mr S with a certificate of tax deduction so he may claim a refund if appropriate.

I asked the parties for their comments.

Both parties agreed to my provisional findings.

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.

Both parties have agreed with my provisional decision so I see no reason to alter these for my final decision.

Putting things right

Barclays should put things right for the reasons stated here and incorporating my provisional findings (as copied above).

My final decision

I uphold this complaint and direct Barclays Bank UK PLC to pay £2,391.34 to Mr S including 8% simple yearly interest calculated from 30 January 2023 to the date of settlement.

If Barclays considers it should deduct tax from my interest award it should provide Mr S with a certificate of tax deduction so he may claim a refund if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 19 March 2024.

Mark Lancod
Ombudsman