

The complaint

Mr F complains that Barclays Bank UK PLC trading as Barclaycard rejected his claim under Section 75.

What happened

Mr F booked a package holiday for himself and his wife with a supplier and paid using his Barclaycard credit card.

When booking the holiday, the supplier advised Mr F to follow a link to fill out a health declaration form before departure. The form could only be completed once Mr F was within 48 hours from departure.

When Mr F attempted to complete the form through the link sent by the supplier the day before he was due to travel, the form wouldn't accept his email address. Mr F tried to contact the supplier for help but was unable to get through.

Mr F and his wife travelled to the airport on 4 December 2022, hoping that help with the form would be available at the check in desk. They were denied boarding by airline check in staff who said the airlines terms and conditions didn't allow them permit travellers who hadn't completed the form to board.

Mr F and his wife returned home from the airport. He looked at the information provided by the supplier again and discovered that travellers who needed help completing the health declaration form were able to fill out a printed form on arrival at the destination airport. Mr F contacted the supplier and told them what had happened. The supplier said it wasn't Mr F's fault but couldn't offer a solution and advised Mr F that he would lose his hotel accommodation if he didn't reach his destination country by 8 December 2022. The supplier also told Mr F that because he hadn't used his outward flight, he wouldn't be able to use the return flight.

As a result of discovering this information, Mr F purchased replacement flights, taxi transfers and an additional nights hotel accommodation. Mr F and his wife flew without having completed the form with the replacement airline and arrived in the destination on 7 December 2022.

When he returned home from his holiday, Mr F asked the supplier to refund his losses, but they refused.

Mr F contacted Barclays and raised a Section 75 claim. Barclays declined the claim. It said that it was Mr F's responsibility to make sure that he adhered to the entry requirements of his chosen destination.

Mr F raised a complaint about the outcome of his Section 75 claim, but this was rejected by Barclays for the same reason. Mr F remained unhappy and brought his complaint to this service.

Our investigator upheld the complaint. They said that the supplier was responsible for the performance of the whole package holiday and that they had breached the contract because parts of it had failed. The investigator said that Barclays were incorrect to have declined the Section 75 claim and said it should refund Mr F for his losses.

Barclays responded and said it agreed that the package travel regulations applied to the holiday as flights, accommodation and transfers were booked together. But it said it didn't agree that the supplier was in breach of the package travel regulations or the contract because it had provided the link to apply for the additional passenger information and the booking conditions highlighted that it was the customers responsibility to comply with immigration requirements.

Because Barclays didn't agree I've been asked to review the complaint.

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.

In certain circumstances, Section 75 gives a consumer the right to claim against a supplier of goods or a provider of credit if there's been a breach of contract or a misrepresentation.

Mr F hasn't said that there's been a misrepresentation, so I've focussed on whether there's been a breach of contract.

The facts of this company are well known to both parties, so I won't repeat them again here. Similarly, I'm not going to comment in detail on the Debtor-Creditor-Supplier aspect of the Section 75 claim, because all parties agree that, although the holiday was booked by Mrs F, the claim can be looked at under shared benefit as both Mr and Mrs F would have benefitted.

The issue here is whether the supplier has acted in breach of contract.

The legal requirement for any package provider is to supply the customer with the promised holiday and services as sold. In Mr F's case, the services sold by the supplier were flights, transfers and accommodation. That's not to say that the supplier provides all these services themselves. However, the supplier carries responsibility for default by its service providers under the EU Package Travel Directives, which are incorporated into the Package Travel and Linked Travel Arrangements Regulations 2018 ("PTR's").

The supplier here was responsible for the performance of the whole holiday package. In this case, part of the package – the flights, the transfer and the first 3 days of the holiday – failed because of the airlines refusal to allow Mr F and his wife to check in due to them not having completed the health declaration form.

The supplier provided Mr F with a link to complete the advanced traveller information health declaration form. This is a form that asks some health questions as well as including the customs declaration form. On submission of the form, travellers receive a QR code and an email which is presented to immigration officers in the destination.

Mr F has provided a screenshot which shows that he was unable to complete the form due to an issue with his email format. Mr F had only a short window of time to complete the form because it wasn't possible to complete it more than 48 hours before departure. He says that as soon as he discovered that there was an issue with the form, he tried to contact the supplier but was unable to get through.

I've reviewed the PTR's and the suppliers booking conditions to see what these say about visa and entry requirements.

The PTR's say that suppliers must provide *"general information on passport and visa requirements, including approximate periods for obtaining visas and information on health formalities of the country of destination"*.

In this case, the supplier provided general information as well as the link for customers to complete the advanced passenger information health declaration.

Whilst I agree that the supplier provided the general information on passport and visa requirements that they were required to do under the PTR's, I don't think the supplier did enough here to provide all the elements of the package holiday that it was contractually obliged to provide to Mr F. I say this because when Mr F contacted the supplier and told them that he'd been denied boarding, the supplier – although acknowledging that it wasn't Mr F's fault – failed to take reasonable steps to ensure that its service provider (the airline) provided the flight. Based on what I've seen, the supplier didn't take any steps to contact the airline to try and resolve the issue with the advanced passenger information form and/or arrange an alternative flight for Mr F. Because the supplier didn't take reasonable steps to ensure that the contract was fulfilled, I'm of the view that the supplier was in breach of contract.

I think that the airline was also at fault here. It denied boarding to Mr F when it shouldn't have done, because the advanced passenger information form could have been completed at the country of destination. This is clear from the information provided by the supplier which states *"Travellers who need help completing the health declaration form before arrival can fill out the printed form at the airport in Cuba"*. And when Mr F travelled on his replacement flights, which he'd arranged at his own cost with a different airline, he was allowed to board and fly without having completed the advanced passenger information form.

As I've said above, the supplier is ultimately responsible for providing all elements of the holiday because this is a package holiday. The supplier must accept responsibility for the failings of the airline under the PTR's because the airline was the suppliers service provider.

Taking all the available information into account, I don't think it was reasonable for Barclays to decline the Section 75 claim. I think there's enough evidence to show that the supplier breached the contract because it failed to ensure the performance of all elements of the package. It follows that Mr F should be reimbursed for his direct consequential losses, these being the replacement flights, replacement transfers and an extra nights hotel accommodation.

Barclays has offered Mr F £100 compensation because it felt that its dispute process took longer than it should've done. I agree that the process was lengthy, and I think Barclays should pay this compensation to Mr F in addition to reimbursing him for his losses.

Putting things right

To put things right, Barclays Bank UK PLC trading as Barclaycard must:

Refund £4,165 for the cost of replacement flights

Refund £225.82 additional night at hotel

Refund £74.13 seat allocation costs for flights not able to use

Refund £389 for 3 nights hotel accommodation not able to use

The refunds should be made to Mr F's credit card and backdated to 7 September 2023 because this is the date when the claim should've been settled. Barclays must reconstruct the credit card account to reflect the refund being given at this date. If, after this, it shows that Mr F would have been in credit at any point, Barclays must pay 8% annual interest on this amount from the date Mr F would've been in credit to the date of the refund.

In addition, Barclays must pay £100 compensation to Mr F for the time it took to complete its dispute process.

My final decision

My final decision is that I uphold the complaint. Barclays Bank UK PLC trading as Barclaycard must take the steps I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 10 December 2024.

Emma Davy
Ombudsman