

## The complaint

Ms J complains Barclaycard failed to recover funds for goods paid for in part using her Barclaycard credit card.

## What happened

In August 2022 Ms J purchased a sofa from a supplier I'll call "X". The total cost of the sofa including delivery was £2,944 and Ms J paid in part using her Barclaycard credit card and another debit card.

The sofa was delivered on 10 November 2022 and Ms J reported issues to Barclaycard in late December 2022. There appears to have been a number of delays where Ms J says she chased Barclaycard for a response. Looking at the contact notes Barclaycard has provided I can't see it had further contact with Ms J until it wrote to her in early March 2023, asking for more information. There are further exchanges between Ms J and Barclaycard in the following months. In May 2023 Barclaycard requested written confirmation Ms J had tried to resolve this issue with X directly first. In August 2023 Barclaycard requested a copy of Ms J's invoice and the terms and conditions for the purchase. I understand there was some confusion due to a separate dispute Ms J had outstanding and some of these documents had already been provided and had been mistakenly added to the other dispute.

In addition, X also engaged a company to complete an inspection of the sofa in May 2023 which found there to be no manufacturing defects (referred to throughout as "report one"). This report detailed the issue raised as being "*the leather is creasing prematurely.*" It concluded this was natural softening from use.

In September Barclaycard requested Ms J provide an independent report and agreed to meet the cost of this up to £250.

Ms J sought the opinion of a furniture repair company on 18 September 2023 which said the leather has stretched and should be dressed on a daily basis to help prevent this. It offered two solutions, one of which was temporary and the other it warned may affect the ongoing comfort of the sofa. However, it made no comment on whether the sofa supplied was of satisfactory quality. From Barclaycard's contact notes I can see Barclaycard didn't think this was sufficient and asked for a report to be commissioned.

In November 2023 Ms J commissioned a second report (referred to throughout as "report two"). This concluded that the leather "*puddling*" was not a manufacturing defect. However, it provided a quote which would repair "*most*" of the issue. In addition, Ms J raised that there was an additional problem with the leather on one of the seats. The inspector concluded that something had affected the leather pigments and again provided a quote to repair. Following this report, Barclaycard declined Ms J's s.75 CCA claim as it said she hadn't shown the issue was a result of a manufacturing defect. However, it offered to pay for the repairs (which were quoted as part of report 2) as a gesture of goodwill, totalling £552. Unhappy with Barclaycard's response, Ms J complained and ultimately referred her complaint to our service.

In Barclaycard's response to this service, it acknowledged it had caused delays due to its handling of this case. So it offered Ms J £100 to recognise this. Our investigator considered the complaint and didn't think Barclaycard had acted unfairly in declining the claim. She also thought that although Barclaycard failed to raise a chargeback, it was unlikely to be successful. She agreed that Barclaycard had caused unreasonable delays and thought £100 was fair to compensate this. Ms J disagreed and asked for an ombudsman to review her complaint.

Since then, Ms J has provided a subsequent report from another company (referred to throughout as "report 3") in May 2024. This report concluded there were manufacturing defects with the sofa. Barclaycard agreed for this report to be considered as part of this complaint, despite it being compiled after it considered Ms J's claim. It reconsidered the claim in light of this, but disagreed it changed the outcome of the claim. The investigator also didn't think the complaint should be upheld in light of this. Ms J disagreed and so the complaint has been passed to me.

I issued a provisional decision (which forms part of this decision) saying the following:

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

I've read and considered all the information I've been provided with about this complaint, but I'll concentrate my comments on what I think is most relevant. If I don't comment on a specific point or piece of evidence it's not because I've not considered it, but because I don't think I need to comment on it in order to reach a fair and reasonable decision. Our rules allow me to do this and this reflects the free informal nature of this service as an alternative to the courts.

#### *The s.75 CCA claim*

When something goes wrong with goods or services and the payment was made, in part or whole, with certain types of credit, it might be possible to make a s.75 CCA claim. This section of the CCA says that in certain circumstances the borrower under the credit agreement can make a like claim against the credit provider, as they can against the supplier, if there's been a breach of contract or misrepresentation.

Ms S purchased a sofa which was paid for in part using her Barclaycard credit card. Having considered the statutory requirements to make a claim of this nature, I'm satisfied that s.75 CCA applies to this purchase.

The Consumer Rights Act 2015 ("CRA") implies certain terms into a contract. In this case it requires the sofa to be of satisfactory quality when supplied to Ms J. What is satisfactory is determined by what a reasonable person would consider satisfactory given the price, description, durability and other relevant circumstances. Should the sofa not be of satisfactory quality, this would amount to a breach of contract.

I think it's fair to say in this case that the facts are finely balanced and there are several reports on the satisfactory quality, or otherwise, of the furniture and an opinion on repairs. Where evidence is contradictory, I must make my decision on the balance of probabilities. I've outlined the timeline of events above, so I'll now go on to consider the three reports in turn to determine, on balance, if the furniture was of satisfactory quality.

Firstly, I'm mindful that the three reports were compiled around 6 months, a year and 18 months after delivery of the sofa. The issue in dispute is the stretching or "*muddling*" of the sofa which it is generally agreed will increase over time due to the use of the sofa. On the one hand this makes the findings in report one more persuasive than the other two reports as it was completed closest to when the sofa was delivered. This report concluded that normal relaxation of the leather is consistent with use. Report two, which was commissioned by Ms J, also concluded that puddling is a natural characteristic of this type of furniture and there was no manufacturing defect in relation to this. It

offered a repair, but warned that the leather would naturally stretch again over time.

I have also considered Ms J's most recent report, report 3. Firstly, this report states that the sofa was delivered in November 2023 and was six months old at the point of inspection. However, the sofa was delivered in November 2022 and was now around 18 months old at the point of inspection. It details a number of manufacturing faults relating to the leather stretching and another issue suggesting the sofa isn't of satisfactory quality. This directly contradicts the two other reports which concluded there isn't a manufacturing defect. On balance I'm more persuaded by the two earlier reports. They were completed closer to when the sofa was delivered, and their findings reinforce/ support each other despite being commissioned by the opposing parties in this dispute (Ms J and X). Report 3 appears to be the outlier.

In addition, I have also reviewed Ms J's invoice and I note that this says the leather will soften with use. It also says that the cushions will need plumping/dressing to keep maximum comfort/form. The two reports together with the invoice suggest, that Ms J was made aware the leather would extend over time and that this is common when purchasing a leather sofa, rather than suggesting the sofa wasn't of satisfactory quality. So taking everything into consideration I'm not persuaded there's sufficient evidence to conclude the sofa wasn't of satisfactory quality. Therefore, I don't think Barclaycard acted unfairly in declining the claim. I appreciate this will be disappointing to Ms J.

For the avoidance of doubt, I have noted that report 2 also commented on some kind of stain caused by something having "*gotten on to*" the leather and it also offered a quote to repair. However, I've not seen anything to suggest Ms J raised this as an issue previously, which suggests this has happened post-delivery and doesn't speak to whether the goods delivered were of satisfactory quality. In addition, I can see as part of her initial claim to Barclaycard Ms J said she wasn't supplied with a cleaning/protection product for her sofa. However, I can't see that this was listed on her invoice, so I'm not persuaded this was something X was required to supply.

### *Chargeback*

A chargeback is the process by which payment settlement disputes are resolved between card issuers and merchants, under the relevant card scheme rules. It allows customers to ask for a transaction to be refunded in a number of situations, including where goods were not as described/ defective. This was another avenue which Barclaycard could have explored to recover the money Ms J paid for the sofa.

Chargeback schemes have strict time frames to raise a dispute which have to be adhered to in order to make a successful claim and are decided by the relevant card scheme rules – in this case Visa. The relevant Visa rules state the dispute needs to be raised within 120 days of the transaction processing date (i.e. when the payment was processed) or when the goods were received.

I've noted the sofa was delivered to Ms J on 10 November 2022 and Barclaycard has said she contacted it about this dispute in late December 2022. This suggests it was raised with enough time for Barclaycard to investigate and raise a chargeback. However, I can't see that Barclaycard requested further information until March 2023. There are also gaps between further requests for evidence which I think it should've been standard practice for Barclaycard to ask for upfront (such as the invoice and the terms and conditions). Furthermore, Ms J's contact notes suggest some of the documentation she provided was added to a different claim of hers. Whilst I can't say Barclaycard was responsible for all the delays, I think it was responsible for a large portion of them. Barclaycard has argued that it didn't raise the chargeback because it didn't have all the evidence. However, I think the main reason for this was that Barclaycard failed to progress the claim efficiently (gathering the required evidence) within the chargeback timeframes.

So it's clear Barclaycard has made some errors here – and it acknowledged that it caused unnecessary delays. What I need to consider is has Ms J lost out as a result of this? The scheme rules would still require Ms J to evidence the alleged faults and so even if Ms J had been able to provide both her reports, together with the report commissioned by X, within the time limit, I think it's likely the chargeback would've been defended and ultimately unsuccessful. As explained above, the weight of evidence suggests its most likely that the stretching is common with leather products and Ms J was made aware of this – rather than demonstrating the sofa wasn't of satisfactory quality.

So I don't think Ms J has directly lost out by Barclaycard's failure to raise a chargeback. However, I do think that the significant delays that Barclaycard has acknowledged it caused were likely to have caused Ms J distress and inconvenience. I note Ms J has told us that she chased Barclaycard repeatedly in the early stages of her claim. Whilst Barclaycard has recognised this and offered £100, I don't think this is sufficient given the extent of the delays Barclaycard has caused and the impact Ms J has told us this had on her. So I think Barclaycard should increase this to £250.

I understand Barclaycard has made an offer to pay for the repairs detailed in report 2. Ms J will need to contact Barclaycard directly to see if this offer is still available, should she choose to.

In response to my provisional decision Barclaycard accepted my findings. Ms J didn't provide a response.

### **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.

Having done so, I see no reason to depart from the findings reached in my provisional decision (which forms part of this decision). To summarise I don't think Barclaycard acted unfairly in declining the s75 CCA claim. And I also don't think Ms J has lost out directly by Barclaycard's failure to raise a chargeback as I think it's likely the chargeback would also have been unsuccessful. However, I do think Ms J has suffered distress and inconvenience as a result of Barclaycard's handling of the chargeback and so I think it should increase the distress and inconvenience payment to £250.

### **Putting things right**

To put things right in this case, Barclaycard should pay Ms J £250 (in total) for the distress and inconvenience it caused her. I make no further award.

### **My final decision**

For the reasons explained above, I uphold this complaint in part and require Barclays Bank UK PLC trading as Barclaycard to put things right in the way I've described above.

Claire Lisle

**Ombudsman**