

## **complaint**

Mr D complains Barclays Bank UK PLC trading as Barclaycard won't refund a payment made on his credit card to a secondary ticket selling website ("the Website") for concert tickets.

## **background**

In February 2018, Mr D bought four concert tickets which took place in August 2018, on his Barclaycard credit card. In total, he paid £437.06.

Mr D complains that he was overcharged for the tickets - he said the Website showed he'd be charged £80 per ticket, meaning an overall total of £320. However, after entering his card details, the Website showed a total price of £437.06 for the tickets. Mr D says he never would have paid this amount had it been shown before he entered his card details. Mr D says he went to the concert.

Barclaycard looked into Mr D's concerns, but they didn't think they could help. They said they didn't feel they had grounds to raise a chargeback claim because they didn't have a reasonable prospect of success. Barclaycard also thought a claim under Section 75 of the Consumer Credit Act 1974 (CCA) should be unsuccessful. They said as the goods and services had been provided, they were unable to prove a breach of contract.

Barclaycard say they blocked Mr D's card when he first contacted them to complain about the payment he'd made to the Website. They then sent him a replacement card. However, Barclaycard acknowledged it wasn't necessary to do this. They said no fraud had been committed and that blocking his account wouldn't have stopped the payment, from the Website, being debited from his account as this had already happened. To say sorry for this, they gave Mr D £25 compensation. As a gesture of goodwill, Barclaycard offered to credit Mr D's account with a further £50, but Mr D didn't accept this.

Barclaycard let Mr D know there was an outstanding balance on his credit card and that in line with the account's terms and conditions, he needed to make the monthly minimum repayment. As Mr D didn't make the repayments required, Barclaycard defaulted the account on 27 June 2019. Mr D has told us the account is now closed and the debt has been sold to a third-party debt collector.

Our investigator looked into Mr D's concerns. In summary, he acknowledged that whilst the total price wasn't shown at the start of the process, by the time a buyer is asked to input their payment details, the full price is shown at this point. And that it would have also been shown on the final page before a buyer completes the transaction. So, he wasn't persuaded that the Website had misrepresented the price. Or that there had been a breach of contract in Mr D's case.

In relation to the default, our investigator said he didn't have information to show Barclaycard had agreed with Mr D to put the payment to the Website on hold. And that Barclaycard made clear in their final response to Mr D that payments would still need to be made to his account. Therefore, as Mr D had missed a number of payments, he didn't think Barclaycard had done anything wrong in defaulting the account.

Mr D disagreed. He reiterated that additional charges were added to the overall total after he'd bought the tickets. Mr D said other witnesses were present at the time he purchased

the tickets and he provided us with a statement from two witnesses to corroborate everything he'd said about the additional charges. Mr D said he wasn't given the opportunity to cancel the tickets and remained of the opinion that had the Website shown the true total cost of the tickets before he completed the purchase, he never would have bought them. So, the complaint has been passed to me.

I issued my provisional findings on this complaint, setting out the below:

*This complaint is about Barclaycard, as Mr D's credit card account provider. It's not about the Website, which isn't a financial service provider and so doesn't fall within my remit. I'm only considering whether Mr D authorised Barclaycard to debit the account with the value of the payment, and whether they should have helped with the dispute with the Website in any other way.*

*Mr D says he made the transaction for these tickets - he entered his card details on the Website and agreed to enter into a transaction with them. Mr D is disputing the amount he paid for the tickets as he says the Website didn't display the full total of the tickets as £437.06 until after he'd bought them.*

*I understand Mr D's strength of feeling on this point, especially as he's been consistent in telling us he never would have bought the tickets had he known the true cost of the tickets. I've seen the steps someone needed to follow to buy tickets on the Website in October 2017 - which I think is more than likely the same steps Mr D followed when he purchased the tickets four months later. I can see from this information the 'total price' is displayed on the final page before the buyer is asked to enter their card details. On balance, I think it more likely than not the total cost of £437.06 was displayed before Mr D consented and authorised the payment.*

*Having considered everything Mr D has told us (including that he made this purchase and paid for the tickets) and the evidence provided by Barclaycard, I'm satisfied the transaction was properly authorised and correctly applied to Mr D's credit card account with Barclaycard.*

*I understand Barclaycard have acknowledged they blocked Mr D's credit card in error. And to say sorry, they gave him £25 as compensation. As a gesture of goodwill, Barclaycard offered to credit Mr D's account with a further £50 which Mr D declined. Barclaycard have since confirmed the offer of £50 is still available to Mr D. Although Barclaycard told us they sent Mr D another card out, I think having a block on his card would have caused him inconvenience. With this in mind, I think the additional offer of £50 is fair in the circumstances of this complaint. Additionally, whilst Barclaycard have acknowledged that something went wrong, I don't think this error had a material impact on the outcome of Mr D's payment dispute with the Website.*

*could Barclaycard challenge the transaction through a chargeback?*

*In certain circumstances, when a cardholder has a dispute with a merchant (as Mr D does here), the card issuer (Barclaycard) can attempt a chargeback. Generally, we say it's fair for a card issuer to attempt a chargeback - or to challenge a payment - if there's a reasonable prospect of success, for example where goods or services aren't received, or it appears that the payment wasn't properly authorised by the cardholder.*

*Indeed, we're aware of cases, with some similar features to this one, where a chargeback has been successful. But I don't think Barclaycard could have challenged the payment on*

*the basis Mr D didn't properly authorise the transaction, given the conclusions I've already set out.*

*The crux of Mr D's complaint is that he was overcharged for the tickets - he thought they were going to cost a total of £320. And it wasn't until he bought the tickets, he realised he was charged £437.06 for them. Mr D says the additional charges weren't added on until after he'd purchased the tickets.*

*Barclaycard say in cases where a customer has claimed that they've been overcharged, they require documentary evidence to support what the cost of the item should have been. However, in Mr D's case, the additional amount he was charged was in relation to fees which were visible on the final screen, before Mr D authorised the transaction. Therefore, Barclaycard say they didn't consider this to be an overcharge claim and didn't think there was a reasonable prospect of success in pursuing a chargeback claim with the Website. Having thought about what both parties have said, alongside the information available to me, I don't think Barclaycard acted unfairly. Mr D told us he received the tickets in time for the concert and was able to attend. Therefore, I don't think Barclaycard could challenge the Website on the basis that Mr D didn't get what he ordered. Or that he wasn't able to use the tickets to gain entry to the event.*

*how about Section 75 of the Consumer Credit Act 1974?*

*As the payment was made using a credit card, I have also taken into account how Section 75 applies to the transaction. In certain circumstances, Mr D has an equal right to claim against Barclaycard as he does against the supplier (the Website) if there's been a breach of contract or misrepresentation by the supplier if certain conditions are met.*

*My role isn't to decide Barclaycard's liability under Section 75. Instead, as statute requires me to, I need to decide what's fair and reasonable, taking into account any relevant law.*

*such as the Consumer Credit Act 1974. For a valid claim under Section 75 there must be a debtor-creditor-supplier arrangement in place. The Website's terms and conditions in this case say:*

*"1.2 Ticketing Exchange. [Website's name] provides a service that allows members who want to buy tickets ("Buyers") to find members who want to sell tickets ("Sellers"). [Website's name] does not take title to the underlying ticket and the actual transactions are between the Buyers and Sellers."*

*This satisfies me that the tickets aren't supplied by the Website. But that the Website does provide a service. And for this they charge buyers a fee. In regard to the fee, the Website says they:*

*".. .charge a service fee on top of the ticket price. This fee is displayed in the check-out process and covers the cost of maintaining the [Website's name] platform, guaranteeing tickets and providing customer service."*

*In effect then, there is a debtor-creditor-supplier arrangement between Mr D, Barclaycard and the Website, albeit not for the direct provision of the tickets themselves. Instead, the Website provides a service. The service consists of two main things - the platform and the guarantee.*

*So, I think the Website is responsible for how ticket information (such as venue, date, time, and the asking price) is displayed to buyers. And I think, under the guarantee, they're responsible for providing replacement tickets or a refund if the seller doesn't fulfil their obligations around supplying the tickets.*

*Another condition necessary for a valid claim under Section 75 is that the service provided by the Website must have a cash price of more than £100 but less than £30,000. In this case, I haven't seen a breakdown of the amount Mr D paid. But I can see from his credit card statement that he was charged a total of £437.06. From our research, we've found that the Website's fee makes up about a third of the total cost. One third of £437.06 is around £146. So, I think it's more likely than not the Website's fee for their service in this case was more than £100 and less than £30,000. This means I think Mr D could have a valid claim under Section 75.*

*So, I've established that the necessary arrangements exist for a claim under Section 75 about the service the Website provided, and that the cash price of that service is sufficient for Section 75 to apply. Next, I need to consider whether there's been a breach of contract or misrepresentation on the part of the Website.*

*As I've explained. I've seen the steps someone needed to follow to buy tickets on the Website in October 2017 - and I've already explained I think these are more likely than not, the same steps Mr D followed when he purchased the tickets. Having looked at this information, I can see the Website displays the total price of the tickets before Mr D needed to enter in his card details. So, because he entered his details and authorised the transaction, the purchase was completed. I appreciate Mr D has reiterated several times that the total amount wasn't shown until he bought the tickets. But I haven't seen anything to suggest this. I also haven't seen anything to suggest the Website misled Mr D or that they told him anything untrue about the price which materially persuaded him to buy the tickets he otherwise wouldn't have. Additionally, the Website facilitated Mr D in finding a seller of the tickets he wanted. And the seller provided the tickets and in time for the concert, which he was able to attend. So, the Website's guarantee about providing replacement tickets or a refund wasn't necessary. Therefore, the Website didn't fail to fulfil its part of the contract or indeed breach it.*

*I note Mr D has provided us with a statement from two witnesses to corroborate what he's told us about the price of the tickets changing after the purchase was complete. I've thought about the fact that these witness statements were provided over a year after Mr D made the transaction in February 2018. Therefore, I'm not entirely persuaded by their recollection of what happened. And I'm more persuaded by the evidence I've seen from October 2017. So, I don't think there was a misrepresentation here.*

*Having carefully thought about everything. I'm satisfied the Website provided a service (as I've described) and I am not persuaded they have breached the contract. Nor have they misrepresented that service to Mr D to my mind. It follows that I currently think Barclaycard acted fairly in the handling of Mr D's Section 75 claim.*

*was there anything else within the Consumer Credit Act 1974 that Barclaycard should have considered?*

*Even though I've made the finding that I don't think there is a valid claim under Section 75, I think Section 56 of the CCA could be of particular relevance to this complaint.*

*In summary. Section 56 has the effect of making the Website the agent of Barclaycard during the “antecedent negotiations” leading up to Mr D entering into a transaction with them. So essentially, this means Barclaycard are responsible for the acts or omissions of the Website and what was said or done before the transaction was entered in to and conducted by the Website. In other words, Barclaycard have to stand behind the things the Website said, did, didn’t say, or didn’t do during the sales process.*

*For a valid claim under Section 56, there has to be a valid debtor-creditor-supplier arrangement in place - which is satisfied for reasons I’ve already explained. However, unlike Section 75, there are no monetary limits attached to Section 56. So, I can consider the impact of Section 56 and whether Barclaycard ought to have considered this in Mr D’s case*

*With this in mind. I’ve thought about whether the Website misrepresented the information, or the tickets Mr D purchased. As I’ve explained, Mr D has been consistent in telling us the Website never displayed the true total cost of the tickets until the end of the purchase process and that he never knew the total amount was £437.06. Instead, he thought he was paying a total of £320 for the tickets. As explained, from the information I’ve seen I’m satisfied the full price of the tickets were made clear to Mr D at the time of purchase. And Mr D completed the transaction, therefore, agreeing to this price. So, I don’t think the Website misrepresented this information or that they misled him.*

*The default*

*I note Barclaycard defaulted Mr D’s account in June 2019 - they say this was because Mr D didn’t make the minimum monthly payments towards the account for at least six months. Barclaycard say they sent Mr D letters each month until June 2019 where they let him know he needed to make a payment towards the account.*

*Barclaycard have told us the credit card agreement Mr D entered into explains where there is an outstanding balance, Mr D is required to pay a minimum payment. And failing to do so will be reported to credit reference agencies.*

*Barclaycard have provided us with copies of letters from June 2018 to June 2019 where they wrote to Mr D letting him know that payment was due on his account. It looks like from the information supplied by Mr D of his credit file that one payment was made to his account in November 2018. But from there on, it looks like there were no payments made until the account was defaulted in June 2019. Barclaycard also wrote to Mr D in April 2019 letting him know he had 28 days to fully clear any outstanding arrears. And if he didn’t do this, a default would be registered.*

*Having considered all of this information, I think Barclaycard gave Mr D enough notice that payment was due on his account. There’s also nothing to suggest Barclaycard had agreed to put the payment to the Website on hold. Or that there were any payments made to the account for at least the six months prior to it being defaulted in June 2019. As Barclaycard didn’t receive any payment and as there were arrears on the account for at least six months before the default was registered, I don’t think Barclaycard have acted unfairly here.*

*Barclaycard didn’t respond to my provisional decision. Mr D responded and said the two witnesses who provided a statement can remember the exact details of the purchase process. And that the reason these statements were provided so long after the event was because Mr D didn’t realise he’d had to supply evidence when making a claim to his bank.*

### **my findings**

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

I want to reassure Mr D that I'm not downgrading the evidence he's supplied us with and I've considered all the evidence carefully. However, as explained in my provisional decision, I've seen the steps someone needed to follow to buy the tickets on the Website in October 2017 – which I think were likely the steps Mr D followed when he bought the tickets in February 2018. And I find this evidence to be more persuasive. To reiterate, I haven't seen anything to suggest the full price of the tickets weren't displayed before Mr D needed to enter in his card details to authorise the transaction. Nor have I seen anything from this information to suggest the total price of the tickets would've changed after Mr D entered his card details.

I appreciate Mr D feels let down by Barclaycard and I understand my final decision will come as a disappointment to him. But I don't think Barclaycard acted unfairly in the handling of Mr D's claim.

Barclaycard have already made an offer of £50 in recognition of incorrectly blocking Mr D's card. And for the same reasons I provided in my provisional decision, I still think this offer is fair.

### **my final decision**

My decision is that Barclays Bank UK PLC trading as Barclaycard should pay Mr D £50.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 1 October 2021.

Leanne McEvoy  
**ombudsman**