

The complaint

Mr A is unhappy how Barclays Bank UK PLC trading as Barclaycard handled his request for help to recover money following the cancellation of a flight and subsequent disruption to his trip.

At times throughout the complaint Mr A has been represented. But for ease of reading, I'll refer to Mr A only in this decision.

What happened

In October 2021 Mr A used his Barclaycard to book flights abroad. Both the outbound and inbound flights included a connecting flight and were booked directly with the airline, who I'll refer to as Q. The outbound flight was scheduled for mid-December 2021.

The night before his outbound flight, Mr A received an email from Q explaining that his destination airport had been changed, as the government restrictions in the country he was visiting meant there were passenger capacity regulations at the original airport. Mr A emailed Q immediately, but as he felt it was unlikely he would receive a response prior to the scheduled time of his flight, he went ahead with the first part of the journey. Once at the connecting airport he spoke to Q and explained what he wanted to happen. Mr A felt he was entitled to rerouting to his original destination in accordance with his Air Passenger rights, at no additional cost. He also felt he was entitled to compensation for being denied boarding to the flight, under Regulation (EC) No 261/2004 (EC261).

Unable to get a satisfactory response from Q, Mr A took the flight that had been changed and travelled to the replacement airport. Once there he had to find accommodation to quarantine in, and incurred travel costs as a result. It was a couple of weeks later that Mr A was able to travel to his original destination and spend time with his family, prior to returning to the UK in January 2022.

Mr A complained to Q. They said he wasn't entitled to any compensation as he had been denied boarding because of government restrictions on passenger capacity, which Q treated as an 'extraordinary circumstance'. According to the relevant legislation, Q said this reason meant they didn't have to pay compensation.

Mr A remained unhappy and got in touch with Barclaycard. He asked them to consider his evidence and the relevant regulations and to help him get some money back. Barclaycard responded and said they couldn't help. They didn't raise a chargeback for Mr A as they didn't think there were any grounds for it under the relevant chargeback scheme. They said that Section 75 (s75) of the Consumer Credit Act 1974 wouldn't give rise to a successful claim either, as Q had offered Mr A an alternative flight which he had accepted. Barclaycard said this meant there hadn't been a breach of contract or misrepresentation from Q.

Mr A didn't accept this and brought his complaint to our service. Our investigator didn't uphold it. She said she understood why Barclaycard didn't raise a chargeback when Mr A got in touch with them. She said she was satisfied Q would've been able to raise a defence to a chargeback had it been raised. For similar reasons, she also said she thought the s75

claim had been declined fairly too. She accepted the original contract had been breached, as Mr A was unable to fly to his expected destination airport. But our investigator felt this breach had been mitigated by Q's offer to reroute him to the alternative airport or to offer him a refund if that wasn't acceptable. Because of that she said she didn't think Barclaycard needed to do anything more for Mr A. In relation to the relevant legislation Mr A had referred to, our investigator said she couldn't consider that, and Mr A could consider taking his concerns to an alternative dispute resolution (ADR) provider.

Mr A didn't agree with this. He maintained that the contract had been breached and the relevant legislation confirmed he should have been entitled to be rerouted to his original destination, as well as receiving compensation. He also felt that a chargeback should have been raised by Barclaycard as it was unknown whether it would be successful or not. He felt that his opportunity to defend it or offer any comment on it was taken away by Barclaycard when they chose not to pursue it. Mr A was also unhappy as Barclaycard had considered a claim under s75 without letting him know they would be doing this. At the time he was trying to get information from Q which he felt would have supported his claim, should he have wanted to make a s75 request once it had been received.

As Mr A didn't agree, it's been passed to me to decide. Prior to finalising this decision I got in touch with both parties to explain why I thought a breach of contract had occurred and what I thought should happen to resolve it. Barclaycard maintained that a breach of contract or misrepresentation hadn't occurred in this case.

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.

There are different ways that a bank can assist customers who have had issues with goods or services not being provided. In some cases, a bank may be able to request a refund from the supplier through the chargeback scheme. This is a way in which payment settlement disputes are resolved between cardholders and suppliers/merchants. They are dealt with under the relevant card scheme rules and in this case that's Visa. In certain circumstances the process provides a way for Barclaycard to ask for a payment Mr A made to be refunded. Those circumstances can include where services aren't supplied.

There is no obligation for a card issuer to raise a chargeback when a consumer asks for one. But I would consider it good practice for a chargeback to be attempted where the right exists and there is a reasonable chance of success.

When a chargeback is raised, the scheme allows a given period of time – usually around a month – for the supplier to reply to say whether or not they agree to the refund. And when a supplier does defend a chargeback, this can lead to further representations by the cardholder's bank. The process then allows for further representations to be made, if parties do not agree for the issue to be decided by the scheme in a process known as arbitration. Alternatively, or in addition, a bank can go on to consider whether there has been a breach of contract (or misrepresentation) under s75.

S75 says that in certain circumstances the borrower under a credit agreement has an equal right to claim against the credit provider if there's either a breach of contract or misrepresentation by the supplier of goods or services.

But for s75 to apply, there are certain criteria that need to be satisfied before looking at whether a breach of contract or misrepresentation has occurred. These include that there is

a specific relationship between the parties, known as the debtor-creditor-supplier agreement and that the purchase meets a certain cash price.

It's important to note that neither a chargeback nor s75 are a guarantee that a consumer recover their funds. It's not uncommon for a bank to deal with a customer dispute by considering a chargeback first and then, if that isn't viable, to consider whether a valid claim exists under s75. Usually, it won't make much difference as to which route a bank follows, so long as the bank acts fairly and reasonably in assisting its customer to recover their funds.

In Mr A's case Barclaycard didn't raise a chargeback when he got in touch and provided his evidence to them. They told him that, because he had made use of the alternative flight Q had provided, they had provided the service to him, and no chargeback right existed because of it. As I've previously said, there wasn't an obligation on Barclaycard to raise a chargeback when Mr A got in contact with them. However, I'm not going to go into detail in this decision about Barclaycard's decision not to raise a chargeback for Mr A as I'm satisfied he had a valid s75 claim. I'll explain why.

The Conditions of Carriage provided by Q to Mr A when he booked his flights confirmed the following would happen in the event of a cancellation or a change of schedule. They explained that Q would either carry Mr A on another of their scheduled Passenger services on which space is available; or reroute him to the destination indicated on his ticket either through one of their own scheduled services or the scheduled services of another provider. Whilst it could be argued that by providing Mr A with a flight to an alternative airport, Q have fulfilled their obligation here, I don't think that is the case. Mr A wasn't given any option other than to take the alternative flight or cancel his booking – and the alternative flight was taking him approximately 900km away from his original intended destination. I think it would be difficult to argue that, by doing that, and by not offering Mr A any other alternative or help to reach his intended destination, Q haven't breached their contract with him.

When Mr A got in touch with Q to complain and to ask for his denied boarding compensation, Q said it wasn't payable because the reason he couldn't take the flight was out of their control and therefore amounted to 'extraordinary circumstances', which, they said, the regulations confirm negates their requirement to pay compensation. But I'm more persuaded that provision only applies in the event of a cancellation, which wasn't the case here. Mr A has provided evidence to Barclaycard and to our service that confirms the original flight went ahead as scheduled – so there is no question that he was denied boarding rather than the flight being cancelled.

Barclaycard have said that, because Mr A was informed the evening before his scheduled flight that he wouldn't be able to board, his seat on the flight had effectively been cancelled rather than him being denied boarding. And, because he was given a choice to accept the new flight to the alternative destination or request a refund, they feel Q have explained why they couldn't assist and haven't breached their contract with Mr A. But I don't agree with Barclaycard here.

Firstly, it's important to point out that Mr A didn't accept the new flight arrangements as suggested by Barclaycard. The alternative flight details were confirmed to him only a few hours before he was due to depart the UK, and he got in touch with Q immediately he was aware to explain the new flight details weren't going to be suitable for him. But he also felt he had no choice other than to start his journey due to the lack of time he had to wait for Q to respond. I don't think Mr A made an unreasonable decision here – he was flying several thousand miles to see his family over the festive period and the lateness of the notification from Q left him with little choice other than to take the first flight and try and sort the matter out at the connecting airport.

Secondly, as I've mentioned above the Conditions of Carriage explain that Q will be responsible for providing Mr A with alternative options in the event of cancellation or a change in schedule. Neither of the options mentioned by them in their Conditions of Carriage suggest they can fly Mr A to an alternative airport without offering to reroute him to his original destination, either on one of their own scheduled services or by utilising the scheduled services of another provider. So, I'm not persuaded that, by flying Mr A several hundred miles away from his intended destination, Q have adhered to their contract with him.

Barclaycard have said that Mr A's seat on his original flight was cancelled and acknowledge that the flight itself still went ahead as scheduled. They feel that the reasons given by Q to limit space on the flight were outside of their control, and therefore weren't covered under the refund compensation regulations. But I have to disagree with Barclaycard here too.

Article 10 of the Conditions of Carriage applied by Q deals with cancellations and denied boarding. Point 4 of Article 10 applies in this case. It says:

'Denied Boarding Compensation

If we are unable to provide previously confirmed space, we shall provide compensation to those passengers denied boarding in accordance with the applicable Convention and or applicable law and or our denied boarding compensation scheme as set out in our regulations.'

Mr A was denied boarding, or in other words, Q were unable to provide previously confirmed space. As such, Mr A's request should have been considered under Q's denied boarding scheme as set out in Q's regulations, as per the term in the Conditions of Carriage above.

And the regulations confirmed by Q state that Mr A, in this case, should have been entitled to compensation of £520 for being denied boarding to the flight. EC261 confirms the following in relation to denied boarding:

'4.4

A. Compensation in the event of denied boarding

4.4.1 Compensation, denied boarding and exceptional circumstances

Articles 2(j) and 4(3) of the Regulation must be interpreted as meaning that compensation is always due in the event of denied boarding and air carriers cannot validly justify an instance of denied boarding and be exempted from paying compensation to passengers by invoking extraordinary circumstances.'

As there is no doubt the original flight went ahead as scheduled without Mr A, it's reasonable to conclude that he was denied boarding and that Q have incorrectly denied him compensation for that, as per the regulations written into their contract with him. In the circumstances of this case they can't use extraordinary circumstances as a reason for not paying Mr A the denied boarding compensation and as such I think it would be difficult to argue his contract with Q hasn't been breached.

Not only has Mr A been denied the compensation, he has also suffered additional costs by having to fly to the alternative airport rather than his chosen one, such as taxi costs to take him from the airport to the hotel he'd had to arrange at the last-minute to allow him to quarantine. He had to pay a cancellation fee for the hotel he'd booked at his original destination, and he also incurred some call costs trying to sort this matter out. In addition, he

had to pay for another flight from the alternative airport to the original, intended destination so he could take his flight back to the UK. The denied boarding compensation and the additional costs incurred by Mr A total £750. I think it's fair that he is reimbursed that amount.

I also think Barclaycard should have done more to investigate Mr A's claim in more detail. The terms and conditions from Q set out what Mr A could expect, and I think Barclaycard had enough evidence for them to consider Mr A's s75 claim in more detail than they've shown in this case. Because of that, I'm asking Barclaycard to pay Mr A compensation of £250 in addition to what I've decided he's entitled to following Q's actions.

My decision is that Barclaycard should pay Mr A £1,000 in total.

My final decision

For the reasons above, I uphold this complaint. Barclays Bank UK PLC trading as Barclaycard must:

- Pay Mr A £750 for being denied boarding to his flight and the regulations not being followed, as well as his additional costs incurred because of this.
- Pay Mr A £250 compensation for failing to apply the terms correctly when considering his s75 claim.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 8 August 2023.

Kevin Parmenter
Ombudsman