

## **The complaint**

Mr S complains about the way Barclays Bank UK PLC trading as Barclaycard handled a claim he made to it.

## **What happened**

The background facts are well known to the parties here so I will cover these briefly and focus on giving reasons for my decision.

Mr S bought dental treatment (crowns) abroad from a clinic ('the supplier') using his Barclays credit card. He is unhappy with the results of the treatment so he made a claim to Barclays to get a refund.

Barclays initially raised a chargeback in October 2022 – but this was not successful. Mr S raised a complaint about this. Barclays responded in February 2023 and said it could not take the chargeback further but it could consider the case under Section 75 of the Consumer Credit Act 1974 ('Section 75') but needed more information from him in order to do so. It also says that it credited Mr S with £50 for poor service.

Our investigator did not uphold the complaint. He acknowledged Barclays had made an error in handling the chargeback claim by failing to promptly review extra information Mr S had sent to it - but didn't think this had caused Mr S a financial loss.

Mr S says he wants an ombudsman to look at the case for a final decision. In summary, he says he sent Barclays documents in the timescales it set out and it failed to follow its procedures/ignored this information. He says that whoever dealt with his complaint and decided he had not provided sufficient information is not a medical advisor but a complaint handler.

## **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.

I have only focused on the information I consider particularly relevant to determining what is fair and reasonable here - this is not intended as a discourtesy and reflects my role in resolving disputes informally.

Barclays is not the supplier of dental treatment here – so in deciding if it acted fairly I consider its role as a provider of financial services only. In that respect I consider in a case such as this the provisions of chargeback and Section 75 to be particularly relevant. It is these I will focus on here.

### **Chargeback**

Chargeback is one way in which Barclays can attempt to get Mr S a refund but it is subject to the rules of the card scheme and is not guaranteed to succeed. The statements provided indicate Mr S used a Mastercard here. However, I note Barclays refers to Visa in its final

response letter. This could be a typographical error – but in any event I don't consider it changes the outcome here.

I note Mr S filled out a dispute claim form saying his teeth were larger than agreed and there were lots of gaps in the teeth. As a result he wanted half of his money back through chargeback.

Barclays did raise a chargeback for Mr S but says the supplier defended this. It appears this was the case and the supplier provided some before and after x-rays to show the size of the teeth and the spacing.

Barclays asked Mr S for more evidence to support his case but it says that due to an internal error it wasn't able to review this before the deadline for continuing a chargeback passed.

I don't think in the circumstances Barclays was acting unreasonably in asking for further information in light of the supplier's defence. I think it is accepted Mr S did respond in time to Barclays request and I don't think there is any dispute here that Barclays should have reviewed the information sooner than it did. It appears because of its delay it was no longer able to continue the chargeback process even if it had wanted to (after reviewing the additional submissions). So I consider the central question here is what the likely consequences of that mistake have been.

It is arguable as to whether what Mr S provided was significant new information to allow Barclays to challenge the supplier further. However, putting that aside had the chargeback continued and been pushed further I think it likely that the supplier would have continued to dispute it in any event. There is nothing that clearly indicates otherwise. Which would then leave the card scheme to make a decision on the matter via an arbitration process.

The arbitration process is decided by the card scheme, whether that be Mastercard or Visa. And the outcome of this is not guaranteed. I appreciate that Mr S has arguably lost an opportunity to have his case put to arbitration. However, this is not a case where I think the prospect of success is more likely than not – in coming to this finding I note the following:

- it involves a complex medical procedure and there is a lack of independent expert evidence to clearly show Mr S didn't get what was described or that the service was sub-standard – furthermore the chargeback scheme does not have the same powers a court does to compel witnesses and expert evidence;
- from what Mr S said on the phone to Barclays when discussing the dispute the basis of his claim appears to be that his teeth are not 'perfect' and he thinks they are 'horrible' but this is somewhat subjective - there appears to be a lack of contractual paperwork showing that Mr S agreed to with the supplier or other evidence clearly showing he did not get what was described;
- from what Mr S says in his submissions it appeared he wanted something different to what the supplier initially proposed and as a result of this negotiation signed some kind of disclaimer and an agreement that he would not get the usual warranty that comes with the crowns; and
- it appears from some information that Mr S has sent in that the supplier was willing to look at resolving problems that Mr S has with a follow up consultation in any event.

I know Mr S is upset Barclays did not take the chargeback further even though he sent it more documents in time for it to continue a chargeback. But considering what I have said above I think on balance it is difficult to conclude that its actions have fairly deprived him of

money in any event. Even if Barclays had taken it further I don't think there is compelling evidence to show the supplier would have accepted liability or the card scheme would likely have upheld the case and awarded him half his costs back. Therefore, I don't think it would be fair to conclude that Barclays should now reimburse Mr S half of what he paid the clinic for the treatment as he is claiming.

## Section 75

Section 75 in certain circumstances allows Mr S to have a '*like claim*' against Barclays for misrepresentation or breach of contract by a supplier of services paid for using his credit card.

Section 75 has technical criteria that needs to be satisfied in order for there to be a valid claim in respect of the actions of a particular supplier. For example, relating to who was involved in the agreement, how it was paid for and what the goods or services cost. In this case we have quite limited information about the nature of the contract agreed (which I will discuss later on). However, based on what I do have I am broadly satisfied the criteria is met for Mr S to have a valid claim against Barclays for a possible breach of contract or misrepresentation by the supplier in respect of the treatment he purchased.

In order to determine if there has been a breach of contract by the supplier any specific terms and conditions of the package Mr S bought along with any terms implied by consumer law will be relevant.

In this case I consider the Consumer Rights Act 2015 is particularly relevant as it implies a term into consumer contracts in respect of services as follows:

- that services will be performed with '*reasonable care and skill*'

Barclays did not look into Section 75 initially and it probably could have so I think it fair to consider whether it should have upheld the claim based on the evidence available at the time. However, I consider there are similar challenges in determining a breach of contract here to those which I have outlined above in respect of the chargeback claim. In summary:

- Mr S purchased a complex cosmetic treatment and something which I nor Barclays have expertise in. It is an invasive process which involves possible complications and side effects. It is commonly known that there are many variables with a cosmetic or medical treatment – and unlike some other services there is often a reasonable expectation that things may not always turn out as planned. So judging whether the supplier has acted without reasonable care and skill or breached the contract in some other way (even if discussions took place about a desired course of action at the outset) is not straightforward.
- It is particularly challenging here with a lack of independent expert evidence to say there has been a breach of professional standards, further compounded with a lack of paperwork to show what was explicitly agreed between the parties (along with any conditions on this). The financial business nor this service (unlike a court) is able to compel witnesses for cross examination either – which makes getting to the bottom of things much more difficult.

As I have noted above – there also appears to be some kind of disclaimer which Mr S signed – and an indication he got the particular look he is unhappy with because he wanted a different sort of treatment to that originally proposed by the supplier. It all adds to the overall complexity and possible variables here which mean I am unable to fairly say that there is a clear breach of contract (or misrepresentation) based on the evidence Mr S presented to

Barclays. So even though it didn't look into the Section 75 claim in depth at the time I don't think it ultimately made an error in not upholding a Section 75 claim at the time.

I know Mr S has indicated the supplier did not provide him with paperwork and it is at fault for this. But in the absence of this or any other persuasive evidence (such as an expert report) and considering the complexities and variables involving a cosmetic treatment it is difficult to have expected Barclays to have concluded there has been a breach of contract here with the information it had particularly without a clear agreement from the supplier that Mr S is due a refund for the way it carried out the treatment.

I note Barclays has said that if Mr S can provide further information such as an expert report it will consider the Section 75 claim further. It initially said it would contribute £250 towards an expert report. I am not sure if that goodwill offer still stands – but Mr S can see if this is still available. My decision here does not prevent Barclays from considering a Section 75 claim taking into account any new information Mr S wishes to provide it.

#### Customer service issues

I know Mr S has recently mentioned phone calls he had with service advisors about information he had provided to support his dispute but I don't think these are central to the key questions here around the likely outcome of the chargeback dispute (had it continued) and Barclays liability under Section 75 so I have not focused on them here. I also note there is not a dispute by Barclays that it made errors in the way it handled the dispute. Namely that it took too long to review the initial claim and that it didn't review the additional documentation Mr S sent in before the chargeback time limits expired for re-presenting evidence.

As I have indicated above – I don't think the impact of the mistake in respect of reviewing the evidence in time has likely caused Mr S a wider financial loss here. However, I do think this and the general delays have caused him unnecessary distress and inconvenience. I note that Barclays has apologised to Mr S for its mistakes in its response letter. And I do take into account what appears to be a genuine apology when deciding what is fair compensation here. I think the majority of distress Mr S has been caused is naturally because Barclays did not refund him. But as I have said I don't think it acted unfairly in that regard. In the circumstances I think the £50 Barclays awarded is fair. In deciding this I have taken into account the guidance in regard to compensation awards we have on our website.

Barclays final response letter and his complaint form says it credited the £50 to his account already. So I don't consider it has anything more to do here. I know Mr S will be disappointed that he isn't getting a refund but my decision here does not stop him from pursuing the supplier directly if he wishes (seeking appropriate legal advice in the process).

#### **My final decision**

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 16 December 2023.

Mark Lancod  
**Ombudsman**