

The complaint

Mrs M complains about the outcome of a claim she made to Barclays Bank UK PLC, trading as Barclaycard and who I'll call "Barclays", under the chargeback scheme and under section 75 of the Consumer Credit Act 1974 ("section 75")

What happened

The details of this complaint are well known to both parties, so I won't repeat them again here. Instead, I'll focus on giving my reasons for my decision.

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 agree with the investigator's view. Please let me explain why.

Where the information I've got is incomplete, unclear, or contradictory, as some of it is here I have to base my decision on the balance of probabilities.

I've read and considered the whole file, but I'll concentrate my comments on what I think is relevant. If I don't comment on any specific point it's not because I've failed to take it on board and think about it but because I don't think I need to comment on it in order to reach what I think is the right outcome.

When something goes wrong and any part of the payment was made with a credit card, it might be possible to make a section 75 claim. This section of the Consumer Credit Act (1974) says that in certain circumstances, the borrower under a credit agreement has a like right to claim against the credit provider as against the supplier if there's either a breach of contract or misrepresentation by the supplier.

I'm not determining the outcome of a claim that a party might have under section 75, only a court can do that. But I take section 75 into account when I think about whether Barclays have been reasonable in their response to Mrs M's claim.

From what I can see, all the necessary criteria for a claim to be made under section 75 have been met.

Was there a misrepresentation?

Misrepresentation is, in very broad terms, a statement of law or of fact, made by one party to a contract to the other, which is untrue, and which materially influenced the other party to enter into the contract.

I'm not persuaded there has been a false statement of fact here. The invoice doesn't explain what colour had been ordered and a subsequent email on 10 August 2022 explains that the

colour will be what Mrs M eventually received (anthracite). There's no false statement there and I don't; therefore, think Barclays were unreasonable to reject the claim on that basis.

Was there a breach of contract?

Mrs M appears to have received what was stipulated on the invoice. The colour of the units was later relayed via email, and was the colour supplied.

I don't, therefore, think Barclays were unreasonable not to support the argument that the contract had been breached.

Mrs M says the invoice should have stipulated the colour and she's provided a competitor's quote in which that was the case. It wasn't Barclay's role to clarify what should have been in the contract. I think any claim about inadequate contract formation, if there is one, would need to be addressed to the merchant. It doesn't seem to me that that would be a consideration Barclays would need to make when thinking about the claim under section 75 – that is whether the contract had been breached or misrepresented to Mrs M.

Were the bank reasonable not to pursue the chargeback claim?

The chargeback scheme isn't administered by Barclays, it's administered by VISA, and they set the rules. Barclays didn't have to submit a chargeback claim and I don't think they were unreasonable not to as on the basis of the information provided I don't think there was a prospect of the claim succeeding. There was, for the reasons I've already given, insufficient evidence that what had been ordered hadn't been delivered, or that the goods weren't as described.

And, as there was insufficient evidence of the goods not being as described Barclay's didn't need to consider whether the merchant had breached its contract with Mrs M by not agreeing to take the goods back – there was no obligation for the merchant to do that.

So, while I understand my decision will be upsetting for Mrs M, I don't think Barclays have done anything wrong here and I don't think it would be fair for me to ask them to take any action.

My final decision

For the reasons I've given above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 27 December 2023.

Phillip McMahon
Ombudsman