

## The complaint

Mrs H complains that Barclays Bank UK PLC trading as Barclaycard has treated her unfairly when she asked it to help her obtain a refund for a holiday she paid for using her Barclaycard credit card.

## What happened

I set out below Mrs H's version of events and Barclaycard's version of those same events.

### *Mrs H's version of events*

Mrs H's daughter booked an overseas package holiday from a third party supplier that I will refer to as "S". The package comprised of flights and a seven night stay in a hotel for six family members including Mrs H. Mrs H paid S £3,984.52 in total.

On arrival at the hotel Mrs H and her party were very dissatisfied with the hotel as many of the facilities were substandard to the point that Mrs H considered they were unsafe. The standard of hygiene in the rooms was not acceptable, for example, there was mould on the air conditioning units, cockroaches and other insects, possibly bedbugs were in the bedrooms. They were moved to new rooms described as "*deluxe*", but the standard was not much better. But they initially accepted the rooms in an attempt to make the best of it.

Further, Mrs H tells us that on booking the holiday they had told S they needed rooms on the lower floors of the hotel due to the disabilities some of her holiday party have. S agreed that they'd be allocated rooms on the lower floors. Instead they were given rooms first on the fifth floor and then on the seventh.

Moreover, the hotel had been marketed online as a family-friendly hotel which does not allow hen or stag party groups. Mrs H and her daughter had read and relied on this information and chose the hotel on this basis. But when she got there, Mrs H found that the hotel in fact catered to a large extent to the hen and stag party market. These guests engaged in activities that Mrs H and her party found unacceptable and intolerable. Moreover, the rowdy and at times offensive behaviour of some of these other guests was allowed to continue even when Mrs H or other members of her family group complained about it to the hotel and S.

One of the family members got an ear infection whilst staying at the hotel, which she attributes to the state of the pool. Although the medical information Mrs H sent us said the infection "*sounds viral*". One of the other family members needed treatment for insect bites both while on holiday and on their return.

In the end, Mrs H and her family cut their holiday short, and returned home. So they could get home early, Mrs H bought return plane tickets for all of her family members. These plane tickets cost £701.97 in total. Therefore the total cost to Mrs H was £4,686.49 (= £3,984.52 + £701.97).

Mrs H's daughter complained to S but ultimately despite promises from S to help her she got nowhere. As a result Mrs H tried a different tack and complained to Barclaycard. Mrs H wanted a full refund and the assistance she was entitled to as a longstanding customer, who has never raised such a complaint before. Instead Barclaycard gave her the run-around, for example it asked for the same information over and over again, gave her incorrect

information, passed her from person to person and took several months to come to a conclusion.

Moreover, Mrs H wanted Barclaycard to write off the interest and charges that related to this purchase given it took so long to decide what to do, but it did not. Rather it just refunded her for her portion of the holiday £781.08 (= £4,686.49/6) and gave her an additional £500 to reflect the loss of enjoyment that the other five people most likely experienced. But Mrs H wanted a full refund for the total price she paid. Mrs H closed her account in frustration. Therefore she initially rejected this refund. Later she did accept the refund but not in full and final settlement.

Mrs H explained that this matter was especially poignant because the money she used to pay for the holiday had come from a legacy from a much loved relative. Therefore the holiday was all the more meaningful due to this. She does not have the money to take her family on holiday again to make up for this holiday.

#### *Barclaycard's version of events*

When Mrs H contacted it Barclaycard told her there were two potential routes for getting her money back. These routes were a claim against itself under Section 75 of the Consumer Credit Act 1974. Or a claim under a process known as chargeback.

As to the complaint under Section 75 Barclaycard was only liable for any losses experienced by Mrs H in relation to the part of the holiday that she contracted for. Barclays did not agree that Mrs H contracted with S for the entire holiday. Rather it thought she just had contractual rights in relation to the part of the holiday that was about services to be delivered to her alone. It accepted that if, in relation to this limited part of the contract, Mrs H could demonstrate either misrepresentation or breach of contract she could hold it responsible for this. However, Barclaycard did not agree that Mrs H had shown either of these things. However, as a goodwill gesture it refunded £1,281.08 to Mrs H's credit card account.

But there was still the second route and that might have been a way for Mrs H to recover the balance of the £3,984.52 at least. The £701.97 would never have been recoverable under the chargeback process because this was a consequential loss and in any event the return flights had been delivered. However, even this avenue was closed to Mrs H. Barclaycard did not start the chargeback process because it thought it was pointless to do so. Specifically, at first Barclaycard said the chargeback would not succeed because what it called the "merchant" (that is S) would have been able to successfully defend any chargeback attempt, on the basis that the services were available. It was not S's fault that Mrs H chose not to use them. It added in any event chargeback is not a mechanism for dealing with the standard of the hotel or its cleanliness. Later Barclaycard said that the chargeback would have failed because S had provided the services it should have done.

Barclaycard indicated that it had not always provided the level of customer service Mrs H was entitled to expect whilst it was dealing with the claim and the complaint. Therefore, it did uphold this aspect of Mrs H's complaint. It recognised that this likely caused Mrs H distress and inconvenience and it credited Mrs H's account with £150 to make up for this.

#### *What happened once the complaint came to our service*

Dissatisfied, Mrs H complained to our service.

One of our investigators looked into Mrs H's complaint. Our investigator's view was that Barclaycard had already done enough. It followed that our investigator did not recommend upholding Mrs H's complaint.

Barclaycard accepted our investigator's recommendation, but Mrs H did not. I've summarised what Mrs H said in response to our investigator's recommendation:

- Mrs H explained that she sat with her daughter and together they selected the holiday. However, her daughter made the booking with S and provided her details

only because Mrs H has a disability that “*cognitively impairs*” her.

- Mrs H said she could send us a video clip to show some of the behaviour she and her family witnessed.
- It is telling that she and her family decided to cut the holiday short, they’d done this because there was something very wrong with the holiday. Further, she reiterated why the holiday was so special to her and her family.
- Mrs H repeated that she should not have been made to pay interest and charges when she closed her account. She thinks she only ran up this interest and these charges because Barclaycard took too long to come to a conclusion about her complaint.
- Barclaycard had not paid her enough for distress and inconvenience.

Mrs H asked that an ombudsman review her complaint.

### **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.

First, I’m very aware that I’ve summarised this complaint in far less detail than the parties and I’ve done so using my own words. I’m not going to respond to every single point made by all the parties involved. No discourtesy is intended by this. Instead, I’ve focussed on what I think are the key issues here.

Our rules allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts. If there’s something I’ve not mentioned, it isn’t because I’ve ignored it. Rather, I’m satisfied I don’t need to comment on every individual argument to be able to reach what I think is the right outcome.

I can well understand why this holiday was so important to Mrs H and her family. The hurt that she feels because it went so wrong in these circumstances jumps off the page. But whilst I recognise Mrs H’s strong feelings I must look at the information I’ve got about the complaint and decide if Barclaycard did anything wrong. If it acted correctly then I’ve got no proper basis to uphold her complaint.

Where the evidence is incomplete, inconclusive, or contradictory (as some of it is here), I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in the light of the available evidence and the wider circumstances.

In considering what is fair and reasonable, I need to have regard to the relevant law and regulations, regulator’s rules, guidance and standards and codes of practice and (where appropriate) what I consider to have been good industry practice at the time.

I think Barclaycard was correct to say it had two potential routes for getting back Mrs H’s money, a claim under section 75 and chargeback. I’ll look at each in turn.

### **Section 75**

The general effect of Section 75 is that if Mrs H has a claim for misrepresentation or breach of contract against the supplier (here that is S) she can also bring a like claim against Barclaycard provided certain conditions are met.

One of these conditions is that there must be a specific type of agreement in place known as a debtor-creditor-supplier agreement. In particular this means that Mrs H would have to be the debtor, Barclaycard the creditor and S the supplier.

The difficulty here for Mrs H is that she is not the debtor. She did not contract with S her daughter did by making the booking with S. This is clear from S’s terms and conditions.

Therefore on the face of it there is no agreement in place that would permit Mrs H to bring a valid claim under Section 75.

I acknowledge Mrs H's points about not knowing the ins and outs of Section 75 when she was organising this holiday. Therefore she did not know what impact it would have on her rights that her daughter did the booking with S and that her payment went to S not the hotel.

However, there is help for Mrs H in this situation because in relation to the booking with S there are provisions other than Section 75 that are relevant. In particular the Package Travel Regulations 2018 ("PTRs").

The PTRs define Mrs H as a "*traveller*", which is a person "*entitled to travel on the basis of a [package travel] contract...*". Further, under the PTRs S would be defined as the "*organiser*" of the package.

The effect of the PTRs is to make it a term of any package travel contract that the organiser will be liable to the traveller for the proper performance of the various travel services included in the contract, such as the provision of accommodation, regardless of whether these services are delegated to third parties such as a hotel. If any of the travel services are not performed in accordance with the contract, then the organiser must remedy the situation within a reasonable period. If they fail to do so, then contractually the traveller is entitled to a price reduction reflecting the period of non-conformity.

Further the PTRs provide that where information relating to key things about the holiday is provided to the consumer it becomes part of the contract and must not be changed unless the traveller agrees otherwise. Also the Consumer Rights Act 2015 ("CRA") has similar provisions regarding implied terms about descriptions. The CRA is also relevant to this complaint. This means the description of the hotel that appeared on S's website could have formed a part of the contract with Mrs H.

The CRA also implies terms into the contract with Mrs H about services it says these must be delivered with reasonable skill and care.

Mrs H's stance is that the contract with S was breached on a number of counts. In that it was a term of the contract that the hotel would not accept bookings from stag/hen parties, but it did. Further it was a term of the contract that the rooms would be on the lower floors of the hotel, but they were not. That it was a term of the contract that the services would be delivered with reasonable skill and care, and they were not. But I don't need to look into any of this in any more detail, simply because even if all of this were correct Mrs H's remedy would be a price reduction but crucially only in relation to the part of the holiday that relates specifically to her. And she has had a remedy that goes beyond this as she has had a full refund in relation to the 1/6<sup>th</sup> of holiday contract that relates to her.

For all of these reasons, I've no proper basis to say Barclaycard has to do more in relation to this part of Mrs H's complaint.

I recognise that Mrs H may find it really disappointing that for very technical reasons, she can't recover the entire amount she spent on the holiday. She might be thinking if only she had been able to book with S she'd have got all of her money back. I do recognise it was impossible for her to book the holiday with S because of her disability.

However, it might help Mrs H to know this. Even if she had been able to book the holiday directly with S I would not have given her a full refund via a full price reduction. I say this because if I told Barclaycard it had to give her all of her money back, I'd been indicating that nothing of value was provided or used, this would be unfair because it would be inaccurate. I say this because in fact part of the holiday was used, for example all six people used the outward flights and did spend several nights too in the hotel. So any price reduction I would have ordered would have only been a partial price reduction.

*Chargeback*

Chargeback is a mechanism for claiming a refund (in full or in part) of a payment made on a plastic card such as Mrs H's credit card. Chargebacks are subject to rules set by the card scheme to which the card belongs. These rules set out what sort of disputes a scheme member (here that would be Barclaycard)) can validly raise a chargeback for, the kind of evidence required to support a chargeback, the time limits involved, and so on.

There is no guarantee that a chargeback will succeed, and it can be opposed or defended by the financial institution which received the card payment, who may not agree that the chargeback is valid. If no side to a chargeback is willing to concede then the card scheme itself can be asked to make a ruling by a process known as arbitration.

I would expect a credit card provider, approached by a customer looking to dispute a card payment for goods or services, to consider whether it had valid grounds for raising a chargeback, and to do so if it would appear that a chargeback would both be compliant with the card scheme rules and have reasonable prospects of succeeding.

Importantly, Mrs H's contractual relationship with S, which as I've explained above affects the amount I think she is able to claim in respect of the holiday under Section 75, isn't something which is mentioned in the card scheme rules as something which would limit the amount she could claim as a refund.

That said what the chargeback would be looking at here is not entirely the same as what would be relevant to Section 75. In so far as chargebacks are not a way of determining a dispute in accordance with national laws, rather, it is the card scheme rules which would decide the outcome of a chargeback case.

Chargebacks are marketed as a way that a card provider can use to help their customer pursue a refund when goods or services have been purchased but are defective/not as described.

Mrs H's stance is that the hotel and the services it provided were defective/ not as described. But Barclaycard decided not to pursue a chargeback. At first it said it was because S provided the services Mrs H just chose not to use them. I've been unable to find any reference in chargeback rules to this being a scenario where a chargeback would not be valid. Then Barclaycard suggested the chargeback would have failed because the services were provided. The issue however was not the provision of services it was the quality of those services that was being disputed by Mrs H.

All of this makes me think that Barclaycard had not identified the correct chargeback reason. However, I think even if the correct chargeback reason had been used it would not have succeeded. I've looked at everything in the case file including the photos Mrs H sent which she clearly thinks is rock solid evidence. But she's nothing to show that hen/stag parties had been booked into the hotel, nothing to show that she'd contracted for rooms on the lower floors, moreover the acceptance of deluxe rooms on high floors might have proved fatal to this part of her complaint. Further, whilst I can see why the rooms she got did not meet her personal hygiene standards, I think it is unlikely, taking into account all of the relevant circumstances, that the chargeback would have succeeded based on the information I've seen.

It follows that it would not be fair or reasonable to say that Barclaycard has to refund the remainder of the £3,984.52 Just for completeness I'll add Barclaycard could never have used chargeback to recover the £701.97 as there was no chargeback reason that would have permitted a valid chargeback in relation to this payment.

### *Interest and charges*

I recognise that Mrs H considers that Barclaycard should not be able to charge her interest and charges. But it is entitled to charge her these under the account terms and conditions. She accepted these terms and conditions when she opened the account. I think it is reasonable to assume, as a starting point, that when a person reads and signs an

agreement – they understand the terms of the agreement and they are agreeing to be bound by them. It follows that Barclaycard is acting fairly and reasonably by relying on these terms and conditions.

In any event, I don't think it follows that Mrs H only incurred the interest and charges because Barclays took too long to reach a decision, Mrs H chose to not pay the balance while she disputed it. That was her choice to make. If she had paid the balance she'd not have incurred the interest and charges. But Barclaycard did not have to suspend or waive these contractual charges because she made that choice. Neither did it have to waive the charges because it took longer than Mrs H thought it should have done to reach a conclusion.

#### *Distress and inconvenience*

Given the special circumstances of this holiday no amount of money is ever going to make up for Mrs H's disappointment and that of her family. I can well understand that Barclaycard made things worse and caused more distress and inconvenience for Mrs H by sometimes messing up when it was looking at her claim under Section 75 and the chargeback.

I don't think £150 is enough to make up for the stress and inconvenience this caused especially since it kept on making the same mistakes. But Barclaycard has already given Mrs H £500 that it need not have given her. I say this because it was not obliged to make any payment to her for the loss of enjoyment her family experienced which is what the £500 represents. So in the circumstances I don't find it is fair or reasonable that it should also have to pay her more for distress and inconvenience.

#### **My final decision**

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H to accept or reject my decision before 20 October 2023.

Joyce Gordon  
**Ombudsman**