

The complaint

Mr and Mrs B have complained to Barclays Bank UK PLC, trading as The Woolwich, about a timeshare membership they bought.

What happened

In 2000, Mr and Mrs B took out a timeshare membership from a timeshare provider ("the Supplier"), through which they were able to stay in accommodation overseas every year. The membership cost £7,970 and the agreement said that there was a deposit payment of £1,770 made using a 'card' and the balance of £6,200 was due afterwards. Mr and Mrs B paid the Supplier £6,200 using a cheque from the Woolwich and say they used a credit card for the deposit.

In 2019, Mr and Mrs B made a claim to the Woolwich with the help of a professional representative ("PR").¹ PR said that the timeshare membership had been mis-sold and that the Woolwich were responsible for the Supplier's misrepresentations and breaches of contract. PR didn't explain why it said the Woolwich could be held legally responsible.²

The Woolwich responded to Mr and Mrs B and said that it was unable to look into the claim as the sale took place 19 years before the claim was made, so it had no way of recovering any funds. Unhappy with what the Woolwich said, Mr and Mrs B asked our service to consider their complaint that the Woolwich hadn't done enough to get their money back.

One of our investigators considered everything and said they didn't think the Woolwich needed to do anything further to settle the complaint. They said that the claim PR made appeared to be a claim under the Consumer Credit Act 1974 ("the CCA"), but there wasn't enough evidence that Mr and Mrs B had paid the Supplier using credit provided by the Woolwich. He also considered whether the Woolwich should have done more to try to recover any monies paid any other way, but thought the length of time taken to make a claim was too long. Mr and Mrs B asked for the complaint to be considered again by an ombudsman.

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.

Having considered everything, I'm not going to tell the Woolwich to do anything further.

Under the CCA, a lender can be held legally responsible for putting right problems when products or services were paid for using credit. Mr and Mrs B have said that the Supplier misrepresented the nature of the timeshare to them and breached its agreement too. This is the sort of thing the Woolwich could be responsible to answer if it was shown that they

¹ Mr and Mrs B are no longer represented by PR

² PR did point to the Consumer Protection from Unfair Trading Regulations 2008, but didn't explain how they could apply to Mr and Mrs B's purchase given that it happened eight years before the Regulations came into force

provided credit to Mr and Mrs B when making their purchase.

On the timeshare agreement I can see that a card was used to pay the deposit, but it's not clear whether this was a 'credit' or a 'debit' card. Mr and Mrs B say they used a credit card, but they've been unable to provide anything that shows that, such as a card statement or receipt. The Woolwich don't have any records that go that far back either. For the avoidance of doubt, there's no requirement for businesses to hold records indefinitely, so I'm not surprised they can't say if their card was used in 2000.

As I can't say it's more likely than not that Mr and Mrs B used a credit card to make their purchase from the Supplier and that the card was provided by the Woolwich, I can't say that the CCA applied to their claims. It follows, I don't think the Woolwich needs to answer any claim for misrepresentation, breach of contract or any other claim to which the CCA may apply.

I've also thought about anything that the Woolwich could have done to recover money paid using either a credit card or cheque. There are schemes in place through which monies paid can be reclaimed. But those only apply within certain time limits and can be defended by the receiving party. In this case, given the length of time between Mr and Mrs B paying the Supplier and them saying something had gone wrong, I don't think there was any realistic prospect of the Woolwich recovering anything even if it tried to. So I can't say it has done anything wrong in saying it wasn't able to recover any funds paid.

My final decision

I don't uphold Mr and Mrs B's complaint against Barclays Bank UK PLC, trading as The Woolwich.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs B to accept or reject my decision before 26 October 2023.

Mark Hutchings
Ombudsman