

## **The complaint**

Mrs B complains that Barclays Bank UK PLC, trading as Barclaycard, won't refund to her the money that she paid to a holiday company. She's being represented in her complaint by a claims management company.

## **What happened**

Mrs B entered into a purchase and sale agreement with a resort company in December 2014 to buy a 128,000 out of a total of 420,960,000 interest in a vacation resort. The final purchase price was US\$20,149, she entered into a mortgage deed and a promissory note with the resort company in which she promised to pay it US\$14,104.40 by monthly payments of US\$242.18, and she paid a deposit of US\$6,044.70. Mrs B also entered into a vacation ownership assignment agreement and use restriction in which she assigned the use, occupancy and possessory rights in the property to a trust, to be administered in accordance with a trust agreement and a vacation plan and 128,000 vacation club membership points were assigned to her to reserve use of property in accordance with the Trust Agreement.

Mrs B says that she's only been able to book one holiday due to there being no availability when she's tried to book and, if she'd been told that she needed to book more than a year in advance, she wouldn't have gone through with the purchase. She also says that she's been told that the timeshare that she's purchased wouldn't get her anywhere to which she actually wants to go. A claim was then made to Barclaycard about those issues under section 75 of the Consumer Credit Act 1974.

Barclaycard responded to that claim in May 2020 and said that no breach of contract or misrepresentation had been established from the evidence provided. Mrs B wasn't satisfied with its response so a complaint was made to this service. Her complaint form says that the resort company is in breach of the contract by misrepresenting the contract to Mrs B and breaching the EU Timeshare Directive.

Barclaycard then issued a final response letter to Mrs B in January 2021. It said that the terms and conditions of the contract stipulate that the plan manager reserves the right to limit availability of accommodation and that Mrs B is entitled to a thirteen month advance reservation priority and an eleven month reciprocal reservation priority. It said that it was unable to prove a breach of contract or validate Mrs B's claim under section 75.

Our investigator didn't recommend that Mrs B's complaint should be upheld. He didn't think that Barclaycard's decision to turn down her claim was unfair or unreasonable as he wasn't persuaded that there was a misrepresentation at the time of sale.

Mrs B's representative, on her behalf, has asked for this complaint to be considered by an ombudsman. It says that the contract and addendum document support the claim that Mrs B has made that she was purchasing bricks and mortar. It also says that she was misled into the belief they she was purchasing property, not a timeshare which merely gives her rights of occupancy, and she didn't wish to buy a timeshare but was interested in ownership of bricks and mortar.

## 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 done so, I agree with our investigator that Mrs B's complaint shouldn't be upheld for these reasons:

- Mrs B's claim was made under section 75 which gives a consumer an equal right to claim against the supplier of goods or services or the provider of credit if there's been a breach of contract or misrepresentation by the supplier (provided that certain criteria set out in that section are met);
- I'm not determining the outcome of that claim in this decision as only a court would be able to do that but I'm considering whether or not Barclaycard's response to Mrs B's claim was fair and reasonable in the circumstances;
- Mrs B entered into the purchase and sale agreement to buy a 128,000 out of a total of 420,960,000 interest in a vacation resort and she also entered into a vacation ownership assignment agreement and use restriction in which she assigned the use, occupancy and possessory rights in the property to a trust, to be administered in accordance with a trust agreement and a vacation plan, and 128,000 vacation club membership points were assigned to her to reserve use of property in accordance with the Trust Agreement;
- I consider it to be clear that the effect of the documents that Mrs B entered into in December 2014 was that she obtained 128,000 vacation club membership points that she could use to reserve property in the resort company's vacation resorts;
- the final purchase price payable by Mrs B was US\$20,149 and she entered into a mortgage deed and a promissory note with the resort company in which she promised to pay it US\$14,104.40 by monthly payments of US\$242.18 and she also paid a deposit of US\$6,044.70;
- Barclaycard says that Mrs B has been paying the monthly instalments on her Barclaycard and it has provided statements for her credit card account which show some of the monthly payments to the resort company;
- I've seen no evidence to show that Mrs B paid the deposit using her Barclaycard so the only payments that it's evident that she's made using her Barclaycard are the payments under the mortgage deed and promissory note so the only claim that she'd be able to make to Barclaycard under section 75 would be that there's been a breach of contract or misrepresentation by the resort company about the mortgage deed and promissory note;
- Mrs B's claim relates to the purchase and sale agreement and the vacation ownership assignment agreement and use restriction and I've seen no evidence to show that there's been a breach of the mortgage deed and promissory note or that those agreements were misrepresented to her;
- I consider that it would have been fair and reasonable for Barclaycard to have rejected Mrs B's section 75 claim for that reason;
- even if Mrs B did pay the deposit using her Barclaycard, I don't consider that she's provided enough evidence to show that there's been a breach of contract or misrepresentation by the resort company;
- Mrs B said in a statement that she: "... *purchased the timeshare whilst on holiday at the resort*"; but that she's only been able to book one holiday due to there being no availability when she's tried to book and, if she'd been told that she needed to book

more than a year in advance, she wouldn't have gone through with the purchase – and that she's been told that the timeshare that she's purchased wouldn't get her anywhere to which she actually wants to go;

- she completed a form from the resort company which asked for her top three reasons for choosing its vacation club membership points by writing: *"Because we travel [a] lot"*; and: *"We loved the idea"*;
- neither Mrs B nor her representative has provided a detailed account of the circumstances in which the alleged misrepresentations were made, the conversations that took place or the information that was provided to her before she entered into the agreements in December 2014;
- there's no reference in Mrs B's statement or the form that she completed to her believing that she was buying property and I'm not persuaded that there's enough evidence to show that Mrs B was led to believe that she was purchasing property rather than vacation club membership points and that she didn't wish to buy vacation club membership points;
- I'm not persuaded that there's enough evidence to show that the resort company misrepresented these arrangements to Mrs B or that she was induced into entering into the agreements by any such misrepresentations;
- Mrs B signed a reciprocal advance reservation priority certificate in December 2014 which set out the usage rules and advance reservation priority to which Mrs B was entitled and I'm not persuaded that the issues with availability and choice of resorts that Mrs B has described would amount to a breach of contract for which Barclaycard would be liable under section 75;
- Mrs B's complaint form says that the holiday company is in breach of the contract by misrepresenting the contract to Mrs B and breaching the EU Timeshare Directive but the property and the resort company are both in the US and I've seen no evidence to show that the EU Timeshare Directive would apply in these circumstances;
- Mrs B's complaint form provides no further information about the alleged breaches of contract by the resort company and I'm not persuaded that there's enough evidence to show that there's been a breach of contract by the resort company for which Barclaycard would be liable under section 75;
- I sympathise with Mrs B for the issues that she's had with her use of the vacation club membership points but I consider that Barclaycard's response to the section 75 claim that had been made to it was fair and reasonable in the circumstances; and
- I find that it wouldn't be fair or reasonable for me to require Barclaycard to refund to Mrs B any of the money that she's paid to the resort company, to pay her any compensation or to take any action in response to her complaint.

### **My final decision**

My decision is that I don't uphold Mrs B's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B to accept or reject my decision before 15 January 2024.

Jarrold Hastings  
**Ombudsman**