



The complaint

Mrs C says that Barclays Bank UK PLC, trading as Barclaycard, who I'll call "Barclays", unfairly rejected her complaint about the sale of a timeshare she financed through them.

Mrs C entered into the agreements with her partner, but as the credit card she used to pay is in Mrs C's sole name, I'll refer only to her in this decision. I mean no disrespect to her partner when doing so.

What happened

Mrs C visited Tenerife and signed up for membership of a holiday club. She says she was unaware this was a timeshare and that the salesman told her to ignore the further fees set out in the documentation in respect of use, fees when not used, and maintenance. She says had she have known those fees would be applied she wouldn't have signed up for the deal as she could have found cheaper holidays through other providers.

Mrs C complained to Barclays, but they rejected the claim she made to them under section 75 of the Consumer Credit Act 1974 ("section 75") and Mrs C therefore referred her complaint to this Service.

Our investigator considered the agreements entered into in July 2018 and January 2019. She thought the first agreement had been superseded by the second and didn't think there could therefore be a valid section 75 claim against it. And regardless, she noted that Mrs C had been able to make use of the timeshare as she'd booked a holiday and used the contract as a deposit for the subsequent agreement. The investigator explained that in order for a section 75 claim to be made there needed to be a valid link between the debtor, the creditor, and the supplier (a so called d-c-s link). She didn't think that was the case for the second agreement as Mrs C had paid a company who I'll call "LM" who in turn had paid the supplier of the timeshare. There was no relationship between LM and the supplier and the investigator was therefore persuaded that the necessary d-c-s link had been broken.

Mrs C didn't agree with the investigator, and she asked for a decision by an ombudsman. The complaint has therefore been passed to me.

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'm required by DISP 3.6.4R of the Financial Conduct Authority's (FCA's) Handbook to take into account the relevant, laws and regulations, regulators rules, guidance, and standards, codes of practice and, when appropriate, what I consider to have been good industry practice at the relevant time.

The Financial Ombudsman Service is designed to be a quick and informal alternative to the courts under the Financial Services and Markets Act 2000 (FSMA). Given that, my role as an ombudsman is not to address every single point that has been made. Instead, it is to decide

what is fair and reasonable given the circumstances of this complaint. And for that reason, I am only going to refer to what I think are the most salient points. But I have read all of the submissions from both sides in full and I keep in mind all of the points that have been made when I set out my final decision.

Section 75 of the Consumer Credit Act (CCA) 1974

Section 75 of the Consumer Credit Act 1974 provides that, under a very specific set of circumstances, a consumer may seek to recover money paid under a contract with a supplier from their credit card provider. There can only be a valid claim under section 75, however, if there is a valid d-c-s relationship.

The July 2018 agreement

When responding to Mrs C's section 75 claim Barclays said:

"Because the first payment and the agreement surrounding this was absorbed by the second agreement, the first agreement is superseded by the second and, therefore, cannot be claimed against."

I don't agree. Even if the second agreement superseded the first, such that they were entirely separate contracts, the first agreement still existed, and Mrs C would be entitled to raise a section 75 claim against it?

Mrs C paid £1,693 deposit to a supplier, who I'll call "RD", using her Barclaycard. The bank therefore has a relationship with Mrs C and the supplier, and I think the d-c-s link is unbroken and valid.

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

If Mrs C was given a false statement of fact or law, and if that false statement was a significant reason why she entered into the agreement I may think the agreement had been misrepresented to her. In those circumstances I may think Barclays were unreasonable not to consider and uphold a claim under section 75.

Mrs C says that she wasn't told this was a timeshare and that the salesman told her to ignore the fees. I can't see this first agreement was a timeshare and I don't think there is evidence that with regard to this first agreement Mrs C was provided with a false statement of fact. The agreement entitled Mrs C and her partner to a week's holiday at a named resort, and thereafter to up to seven weeks accommodation that would need to be booked through a named provider. The contract was for 12 months only and there were no maintenance fees.

Mrs C used her first week of accommodation before trading in this agreement for another. I don't think there's evidence it was misrepresented to her.

The January 2019 agreement

In July 2018 Mrs C exited her July 2018 agreement, and the balance was used to offset some of the fees due on a new *"timeshare"* agreement.

Whilst LM appear to have brokered the agreement it was a company called AM that Mrs C has explained she made payment to. They are the suppliers of the timeshare agreement.

So, I think there was a valid d-c-s agreement in place, and I can see that Barclays did as well, as they considered this aspect of Mrs C's complaint under section 75.

If Mrs C was given a false statement of fact or law, and if that false statement was a significant reason why she entered into the agreement I may think the agreement had been misrepresented to her. In those circumstances I may think Barclays were unreasonable not to uphold a claim under section 75.

Mrs C says she wasn't aware the agreement was a timeshare agreement and that she wasn't aware that she would need to pay maintenance fees or membership fees. I think the agreement that Mrs C signed clearly sets out the fact that maintenance fees would be charged if the timeshare was used and that a membership fee would be charged if it wasn't used. It also explains that it's a "timeshare" agreement and I'm afraid I don't think I therefore have sufficient evidence to support Mrs C's testimony that she was told otherwise.

In those circumstances, I don't think Barclays were reasonable to reject Mrs C's section 75 claim and I'm not asking them to take any further 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 C to accept or reject my decision before 1 August 2023.

Phillip McMahon
Ombudsman