

The complaint

Mr K complains that Barclays Bank UK PLC, trading as Barclaycard, has rejected the claims that he's made under the Consumer Credit Act 1974. He's being represented in his complaint by a claims management company.

What happened

Mr K and his wife entered into an acquisition agreement to buy some timeshare holiday club points in February 2010. The purchase price of the points was £20,744 but, after a trade-in value was deducted, the balance payable was £14,749. Mr K used his Barclaycard credit card to pay £2,000 towards that amount and the balance was paid by other means.

Mr K and his wife's representative made claims to Barclaycard under sections 75 and 140A of the Consumer Credit Act in February 2018 that the timeshare had been mis-sold to them. Their representative said that they'd been unduly pressurised into buying the timeshare, it had been misrepresented to them and had been sold as an investment, and the commission paid hadn't been disclosed to them which made the relationship unfair. Barclaycard hadn't responded to those claims so Mr K complained to this service.

Barclaycard then said that there hadn't been a breach of contract or misrepresentation by the timeshare company so Mr K didn't have a valid section 75 claim. It apologised that his claim hadn't been dealt with in a prompt and timely manner and it credited £25 to his account. Mr K wasn't satisfied with its response so complained to this service. Barclaycard then said that there was no direct link between the debtor, the creditor and the supplier that's required for a valid claim under section 75.

Our investigator didn't recommend that this complaint should be upheld. She didn't think that Barclaycard acted unfairly when it said that it wasn't going to look into Mr K's misrepresentation claim any further and she believed that it was unlikely that a court would conclude that the timeshare company's actions generated an unfair debtor-creditor relationship.

Mr K's representative, on his behalf, has asked for this complaint to be considered by an ombudsman. His representative said that a full substantive response would follow upon receipt of instructions from Mr K but no such response has been received. His representative says that the date of knowledge of the misrepresentation should be used and that Mr K is relying on section 32(1)(a-c) of the Limitation Act 1980.

Another of our investigators then said that Mr K cleared his credit card balance in May 2010 and that it would've been fair for Barclaycard to turn his claim down because it was raised too late.

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 the outcome recommended by our investigator for these reasons:

- we don't have a free hand to consider every complaint that's referred to us and our rules, which we're required by law to follow, say – amongst other things – that we can't normally deal with a complaint if it's referred to us more than six years after the event complained of; or (if later) more than three years from the date on which the complainant became aware (or ought reasonably to have become aware) that they had cause for complaint;
- Mr K referred his complaint to this service within six years of the event that he and his wife have complained about – which is Barclaycard turning down their claims under the Consumer Credit Act - but I need to consider whether it has acted fairly and whether the Limitation Act applies to his claims;
- in this decision I'm not determining the outcome of those claims as only a court would be able to do that but I'm considering whether or not Barclaycard's response to Mr K's claims under sections 75 and 140A was fair and reasonable in the circumstances;
- section 75 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);
- Mr K used his Barclaycard credit card to make a payment towards the cost of the timeshare and his claim under section 75 is that the timeshare was misrepresented to him and his wife and that they wouldn't have bought it if it hadn't been misrepresented to them;
- if the criteria for a claim under section 75 were met, Barclaycard would be expected to consider that claim - unless the claim was brought outside of the time limits set out in the Limitation Act in which case it would be entitled to rely on the Limitation Act and to not consider the claim;
- the time limit for a misrepresentation claim (whether under section 2 or section 9 of the Limitation Act) is six years from the date on which the cause of action accrued (which is when everything needed to make a claim had occurred);
- I consider that Mr K could have made a claim to the timeshare company or Barclaycard about the misrepresentations that induced him and his wife into buying the timeshare when they entered into the acquisition agreement in February 2010 as that was when they say that they entered into an agreement based on the misrepresentations of the timeshare company and suffered a loss as Mr K used his Barclaycard credit card to pay for part of the cost of the timeshare;
- I consider that their cause of action accrued at that time, so Mr K would have had six years from then to bring a claim against either the timeshare company or Barclaycard – but he didn't make a claim against Barclaycard until February 2018, eight years later which was outside of the time limits set out in the Limitation Act;
- Mr K's representative says that Mr K only became aware that he could make a claim to Barclaycard after he sought advice from it – but when he had the knowledge to bring a claim doesn't assist him for the purposes of the Limitation Act – the time limits for a claim under some sections of that Act are extended where a claimant doesn't have knowledge at the time when the cause of action accrued, but I don't consider that those sections are applicable to Mr K's claim;

- I consider that Mr K's section 75 claim is time-barred under the Limitation Act and I don't consider that there's any need for me to assess whether or not there was a debtor-creditor-supplier relationship in these circumstances;
- Mr K's representative says that there was an unfair relationship between Mr K and Barclaycard and section 140A gives a court the power, amongst other things, to require a creditor to repay any sum paid by the debtor under a credit agreement if it determines that there's an unfair relationship between the debtor and the creditor;
- the courts have said, when considering section 140A, that the time for limitation purposes runs from the date that the credit was repaid and the limitation period for a claim under section 140A is six years;
- Mr K made the payment using his credit card in February 2010 but his credit card statement shows that he paid £2,000 to Barclaycard in April 2010 which reduced the balance on his account to zero – so I consider that at that time he'd repaid the credit that had been provided to him for him to make a payment for the timeshare;
- I consider that he would have needed to make a claim against Barclaycard within six years of April 2010 – but a claim wasn't made to it until February 2018, nearly eight years later, which was outside of the time limits set out in the Limitation Act;
- Mr K's representative says that Mr K is relying on section 32(1) of the Limitation Act which deals with actions based on fraud, deliberate concealment and mistake – that didn't form part of the complaint that was made to Barclaycard or to this service but I don't consider that section 32(1) would benefit Mr K in any event for the reasons set out below;
- in some cases actions based on a fraud have longer limitation periods but I'm not persuaded that there's enough evidence to show that the timeshare company fraudulently misrepresented the timeshare to Mr K and his wife and I don't consider that it changes the limitation period that I've described above – nor am I persuaded that Mr K's action is based on a mistake;
- section 32(1)(b) says that, if any fact relevant to the debtor's right of action has been deliberately concealed from them, the period of limitation doesn't begin until the debtor has discovered the concealment or it could with reasonable diligence have been discovered by them – and section 32(2) says that deliberate commission of a breach of duty which is unlikely to be discovered for some time amounts to deliberate concealment of the facts involved in the breach;
- Mr K and his representative have set out what they say happened before Mr K and his wife entered into the acquisition agreement in February 2010 – but I don't consider that there's enough evidence to show that there's been a deliberate concealment of any relevant information (in fact many of the things that they say weren't right would have been known to them at the time of the sale) so I don't consider that section 32 is applicable in these circumstances;
- I'm not persuaded that there's enough evidence to show that Mr K and his wife were unduly pressured into entering into the acquisition agreement in February 2010 – Mr K didn't complain to Barclaycard about that until February 2018 – eight years later and I consider that it would be reasonable to expect him to have complained to Barclaycard about any such issues before then;
- Mr K's representative has said that Barclaycard should have told him about any commission that was paid to the timeshare company – but Mr K used his Barclaycard credit card to pay for part of the cost of the timeshare and I've not been provided with any evidence to show that any commission was paid by Barclaycard to the timeshare company;

- I consider that Mr K's section 140A claim is also time-barred under the Limitation Act;
- Barclaycard responded to Mr K's claims in September 2018 and didn't uphold his Consumer Credit Act claims but it apologised that his claim hadn't been dealt with in a prompt and timely manner and it credited £25 to his account;
- its response didn't refer to the Limitation Act and I consider that it should have assessed whether that act applied to his claims under sections 75 and 140A, so I can't say that it acted fairly and reasonably in response to his claims – but I consider that it wouldn't have upheld the claims if it had properly considered them as it would have said that the claims weren't made within the periods set out in the Limitation Act;
- I consider that Barclaycard's apology and the credit of £25 for not dealing with Mr K's claim in a prompt and timely manner was a fair and reasonable response to those issues and I'm not persuaded that it would be fair or reasonable for me to require it to take any other action about those issues; and
- I sympathise with Mr K and his wife for the issues that they've had with their timeshare and the difficulties that they've described, but I find that it wouldn't be fair or reasonable in these circumstances for me to require Barclaycard to refund to Mr K any of the money that he paid for the timeshare, to pay him any compensation or to take any other action in response to his complaint.

My final decision

My decision is that I don't uphold Mr K's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 21 June 2022.

Jarrold Hastings
Ombudsman