

The complaint

Mrs M complains that Barclays Bank UK PLC, trading as Barclaycard, won't refund to her the money that she paid for some holiday club points. Mrs M is being represented in this complaint by a professional adviser.

What happened

Mrs M and her husband had some holiday club points and they entered into a purchase agreement with a holiday company in September 2012 to buy 40,000 more holiday club points. Mrs M used her Barclaycard credit card in October 2012 to pay £5,102.55 to the holiday company for those points. The holiday company provided Mrs M and her husband with a letter which confirmed that they could surrender their points after the fifth year of membership with no additional costs.

Mrs M's representative claimed a refund of the cost of the holiday club points from Barclaycard under section 75 of the Consumer Credit Act 1974 in November 2016. It said that there had been misrepresentations and breaches of contract by the holiday company. Barclaycard said that the debtor-creditor-supplier relationship that was required for a claim under section 75 had been broken so the claim didn't meet the criteria for section 75. It also said that its liability under section 75 was for a breach of contract or misrepresentation but not a breach of law or directive which would be a breach of statutory duty. Mrs M wasn't satisfied with its response so a complaint was made to this service.

Our investigator said that there was a relevant debtor-creditor-supplier relationship in these circumstances, which was accepted by Barclaycard, but he didn't recommend that Mrs M's complaint should be upheld. He didn't agree that there had been misrepresentations or breaches of contract by the holiday company. He also considered Mrs M's claims under section 140A of the Consumer Credit Act but he didn't consider that there was an unfair relationship. He said that the evidence available didn't appear to support the claim for a refund.

Mrs M's representative, on her behalf, has asked for this complaint to be considered by an ombudsman. It says that a timeshare product has been sold to Mrs M and her husband which is unusable, which is illegal and which has cost them thousands of pounds.

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:

- in certain 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;

- to be able to uphold Mrs M's complaint about Barclaycard, I must be satisfied that there's been a breach of contract or misrepresentation by the holiday company and that Barclaycard's response to her claim under section 75 wasn't fair or reasonable – but I'm not determining the outcome of Mrs M's claim under section 75 as only a court would be able to do that;
- Mrs M and her husband bought 40,000 holiday club points under the purchase agreement;
- those points were in addition to the points that they'd previously bought and which were granted in perpetuity;
- subsequent to Mrs M and her husband signing the purchase agreement, the holiday company confirmed that: "... *should you decide to surrender your [holiday club points] membership, partially or in its totality, you may do so after your fifth year of membership with no additional costs ...*";
- Mrs M and her husband received the 40,000 holiday club points under the agreement and also received the right to surrender the points that had been granted in perpetuity;
- it's clear that the points that Mrs M and her husband had bought previously were granted in perpetuity but I don't consider that the points that they bought under the purchase agreement in September 2012 were granted in perpetuity;
- Mrs M's representative has referred to a 2015 court judgment from the country in which the holiday club was based about the illegality of timeshare products in perpetuity – but that judgment was made three years after Mrs M and her husband signed the purchase agreement and I don't consider that the purchase agreement was illegal at the time that it was made or that there's enough evidence to show that there's been a breach of contract by the holiday company;
- Mrs M's representative also says that the holiday company has breached the EU timeshare directive and other laws about timeshares – but I'm not persuaded that there's enough evidence to show that the holiday company has failed to comply with any legal requirements for which Barclaycard would be liable under section 75 or that the holiday club points are unusable;
- Mrs M has described how she says that the purchase agreement was sold to her and her husband and her representative says that they were advised that the only way they could exit their membership was to purchase more points, that their son would be responsible for the management fees after their deaths and that the new owners of the timeshare company had issued proceedings against a great many people for unpaid maintenance fees;
- much of that relates to what she says she was told by the timeshare company but there's no written record of what was said by the timeshare company and I'm not persuaded that Mrs M has provided enough evidence to show that the holiday company misrepresented the holiday club to her and her husband or that they were induced into entering into the purchase agreement by a misrepresentation made by the holiday company;
- Mrs M's representative says that Mrs M and her husband believed that they were entering into a contract with the holiday club owner and that their payment was made to another company which was a misrepresentation;
- the name of the company that was selling the holiday club points to Mrs M and her husband was clearly set out in the purchase agreement and was also confirmed elsewhere in the documents - the payment was made to another company but Mrs M received the benefit of the payment even though it was made to another company

and I'm not persuaded that there's enough evidence to show that there was a misrepresentation about the contracting parties;

- our investigator considered Mrs M's claim under section 140A and concluded that the relationship between Barclaycard and Mrs M wasn't unfair – but the claim that was made to Barclaycard by Mrs M's representative in November 2016 didn't include a claim under section 140A so Barclaycard wasn't given an opportunity to respond to that claim in its final response letter – so I'm unable to consider a complaint about a section 140A claim as part of this complaint;
- if Mrs M wants to make a claim under section 140A, she should make a claim to Barclaycard and then, if she's not satisfied with its response, she may be able to make a complaint to this service – but from the evidence that I've seen I don't consider it to be likely that a court would conclude that the relationship between Barclaycard and Mrs M was unfair in these circumstances;
- I don't consider that Barclaycard properly considered Mrs M's claim under section 75 so I can't say that it acted fairly and reasonably in response to her claim – but I consider that it wouldn't have upheld the claim if it had properly considered it as it would have said that there hadn't been a breach of contract or misrepresentation by the holiday company; and
- I sympathise with Mrs M and her husband for the issues that they've had with their holiday club membership and the difficulties that Mrs M has described, but I find that it wouldn't be fair or reasonable in these circumstances for me to require Barclaycard to refund to her any of the money that she paid for the holiday club points, to pay her any compensation or to take any other action in response to her complaint.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 14 July 2022.

Jarrold Hastings
Ombudsman