

The complaint

Mr M has complained that Barclays Bank UK Plc has unfairly turned down his claim under section 75 of the Consumer Credit Act ("CCA").

What happened

Mr M and his partner purchased a timeshare overseas at a holiday resort ("the Resort") in July 2016. The nature of his agreement was that he purchased points to enable him to book to stay at the Resort in "Week 34".

The following year, Mr M contacted the Resort to confirm the exact date of arrival for his purchased week and found he had purchased an unsuitable week.

Mr M raised a claim with Barclays under s.75 CCA for misrepresentation. Although the timeshare was taken out by Mr M and his wife, as the card used to pay the deposit was in his name, he made the complaint to Barclays. He said he and his wife were verbally told he was purchasing Week 34, which fell on 6 August in 2016, and would be around the same time every year. But when he tried to book his accommodation, he learned the week actually fell three weeks later, starting 27 August 2017.

Mr M said he raised a complaint with the Resort and, shortly after, also raised a claim with Barclays. Ultimately, Barclays disagreed with the argument that there had been a misrepresentation or breach of contract. As the parties were unable to reach an agreement, Mr M complained to our service.

Our investigator thought the Resort had misrepresented the timing of the week purchased and said Barclays should pay the claim. Barclays disagreed, but suggested it would be willing to pay the difference if Mr M was able to provide it with a quote to change the week to an earlier one. Mr M said he wouldn't accept this as a fair outcome to his claim as he no longer wished to deal with the Resort as he felt it was dishonest and he thought Barclays was trying to avoid its responsibilities.

Our investigator did not change her opinion, and as Barclays did not agree with our investigator's view, the complaint was passed to me for a decision.

Having read all of the available evidence and arguments, I came to a different conclusion to our investigator and I did not think this complaint should be upheld.

My provisional findings

I noted that Mr M brought a claim for a full refund of his timeshare purchase on the basis that the timing of Week 34 was verbally misrepresented by the Resort's sales agent to fall earlier in the month of August than in actuality. He said that, but for this misrepresentation, he would not have agreed to purchase the timeshare as he has limited availability due to work commitments and could not have taken holidays during Week 34.

When Mr M first approached Barclays he gave his version of events. The timeshare was bought on 27 July 2016 and Mr M said he was told by the representative from the Resort that the week purchased in that year was from the “*end of next week*”. In 2016 that would have started on the weekend of 6 August and Mr M said that he confirmed this was the case. But when he came to use the timeshare the following year he was told Week 34 started on 27 August in 2017 and 26 August in 2018. Mr M said these dates weren’t set out in the paperwork and the agreement only refers to “*Week 34*”. Mr M raised his concerns with the Resort, but he says he was told they couldn’t change his week or terminate the agreement.

Later, when Mr M brought his complaint to our service, he explained that he spoke with two sales representatives of the Resort, who both confirmed the dates for Week 34 were suitable before he signed the timeshare agreement. Mr M said he had an in-depth conversation about his job and why only some weeks would work for him. It was after this conversation that he agreed to take out the timeshare.

I gave some thought to the version of events described by Mr M. He explained that his availability is limited by the demands of his job and I didn’t think he would have knowingly purchased a timeshare week that he couldn’t have used. I saw information provided by Mr M that showed he needed to work on 23rd and 24th August 2017 and 22nd and 23rd August 2018, which were in the weeks immediately preceding his holiday week. I accepted that the demands of his job meant Week 34 wasn’t suitable for him as he also normally had to work the following week too.

Mr M had been clear and consistent throughout his claim and had provided evidence that shows he first complained to the Resort in the first half of 2017, which would fit with his memories of when he first discovered the week booked wasn’t suitable for him. So it appeared he first complained shortly after he realised something had gone wrong.

However, I also thought about the representation that Mr M said were made to him by the sales representatives of the Resort. He said he was told Week 34 started from the “*end of next week*” and when Mr M asked if that was the 6 August, he said he was told it was. Mr M’s case was that he relied on this representation and that it was untrue.

I saw the agreement between the Resort and Mr M. It simply said, under the description of the timeshare, “*Week/Unit(s) 34/000344 Sunday to Sunday*”. I saw a copy of the terms and conditions attached to the purchase agreement. They were hard to read, but it appeared to say “*Unit Week No. 1 is the seven (7) days commencing on the first Saturday in each year. Unit Week No. 2 is the seven (7) days succeeding.*”

I thought the agreement clearly set out how the weeks were to be worked out and, having looked at a calendar, it was clear that Week 34 would always fall within the last two weeks in August. I also saw from the Resort that Week 34 falls in “*Prime Season*”, whereas the earlier weeks in August fall within “*Peak Season*”, which was around \$6,000 more expensive to buy at the outset. On the face of it, I thought it was unlikely that a representative would make the representation that Mr M alleged, given that the dates that any given week falls within are easily verifiable and Mr M would have needed to buy a different product to be able to stay on the dates he needed.

Although Mr M had been clear in his recollections of what was said, I was mindful that I only had evidence of what was said from Mr M, not from the Resort. There was no evidence to corroborate what Mr M said happened and the only documentation from the time of sale – the contract – explained that Week 34 was on a different date. I also didn’t have any evidence from Mr M as to why he decided to buy a timeshare in Week 34 over any other

available week or any of his other recollections around the sales process that would lend weight to his allegation of misrepresentation.

For the reasons given above, therefore, and on balance, I didn't think I could say it was more likely than not (given the particular circumstances of this complaint) that Week 34 was misrepresented. But I said that, even if I did think that such a misrepresentation was made, I thought Barclays' offer to pay to move Mr M's week to an earlier one would have been fair. I said that as when a claim, such as Mr M's, is brought for a misrepresentation the court has the power to order either the rescission of the underlying agreement or to order damages in lieu of rescission.

Here, Mr M's complaint was about the week in which he could take holidays. Barclays offered to pay the difference so that Mr M could buy more points and therefore move the date of his timeshare week to one that was suitable for him, which would deal with the actual complaint that was brought. I thought that would be a fair and proportionate outcome to his claim. I understood that Mr M was minded not to accept the offer, noting that he wouldn't have wanted to buy a more expensive timeshare, that he didn't want to continue a relationship with the Resort, whom he considers to be dishonest, and that he felt Barclays were trying to get out of their responsibilities under s.75 CCA. He also said the Resort would be unable to give him an upgrade price unless he went to the Resort himself in person. But I thought Barclays' offer would have adequately answered the specific complaint brought. However, as Mr M had indicated that he doesn't wish to accept the offer, I didn't propose to direct Barclays to do anything further.

Barclays responded to say it agreed with my provisional decision. It also said that interest had been suspended on Mr M's account whilst this dispute was with our service, but that it proposed to start charging interest again if I issued a final decision along the same lines.

Mr M responded to say he disagreed with my provisional decision and asked me to reconsider my findings.

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.

When doing that, I am required by DISP 3.6.4 R of the Financial Conduct Authority's (FCA) Handbook to take into account:

- (1) *relevant:*
 - (a) *Law and regulations;*
 - (b) *Regulators' rules, guidance and standards;*
 - (c) *Codes of practice; and*
- (2) *(where appropriate) what [the ombudsman] considers to have been good industry practice at the relevant time*

Where evidence is incomplete, inconclusive or contradictory, I reach my decision about the merits of this complaint on the balance of probabilities – in other words, what I consider is most likely to have happened in the light of the available evidence and the wider circumstances.

Mr M has set out in some length why he disagrees with my findings on what I thought was most likely to have happened. I've carefully considered everything he has said, but having done so, I've not changed my mind from my provisional decision. I will explain my reasons,

but in doing so I won't comment on every point Mr M has made. But I'd like to assure him I have thought about everything he's said.

The claim that Mr M has brought has been made under s.75 CCA. Under that provision Barclays can be held jointly liable for misrepresentations made by the Resort in certain circumstances. I explained in my provisional decision that I did not find, based on the evidence available, that it was more likely than not that the Resort made the alleged misrepresentations about Week 34. In summary, based on Mr M's recollections alongside the available documentary evidence, I didn't think there was enough for me to say it was more likely than not that the alleged representations were made.

Thinking about one part of the evidence, in my provisional decision I said:

"However, I have also thought about the representation that Mr M says was made to him by the sales representatives of the Resort. He says that he was told Week 34 started from the "end of next week" and when Mr M asked if that was the 6 August, he says he was told it was. This is the representation that Mr M says he relied on and was untrue."

In response Mr M has said:

"...you make reference to our statement that we were told that week 34 was the "end of next week". This is not correct. At no point have we said it was described as the "end of next week", but rather "the week after next". This description was used consistently and repeatedly by the Sales Representative ([RB]) and the Sales Manager ([PB])..."

I have seen a form filled in by Mr M when he first made a claim to Barclays titled "Cardholder Dispute Form". It is a form sent to customers for them to set out their claims against Barclays. Mr M handwrote on the form, including his name and card details. There is a part titled "DISPUTE DETAILS" which reads:

"ON 27-7-2016 WE PURCHASED TIMESHARE POINTS AT [THE RESORT]. AT THE POINT OF SALE THE SALES REPRESENTATIVE INFORMED US THAT THE WEEK THAT WE WERE PURCHASING WAS FROM THE "END OF NEXT WEEK". WE CLARIFIED THIS AS MEANING THE WEEKEND OF 6TH AUGUST 2010. THIS WAS ALL VERBAL COMMUNICATION..." (emphasis my own)

So I am satisfied that in bringing his claim, Mr M did originally say he was told Week 34 was the "end of next week" and not "the week after next". On the face of it, the difference between these two phrases may be minimal, however I think in this claim the difference is important.

Mr M's claim is based on a very specific verbal representation he says was made. The representation is in opposition to what is set out in the contractual documentation and the only evidence supporting Mr M's claim is his own recollections. I accept it is not likely Mr M would have remembered the precise language used, given that any representation was made orally and he first complained several months later. But in response to my provisional decision, Mr M says that two named people used a specific phrase that is different to what he originally said to Barclays. So I am not certain that Mr M's recollections are as strong as he believes.

In my provisional decision I noted that the copy of the terms and conditions were hard to read. Mr M says this shows a lack of certainty and clarity, and contradictions mean the documents should not be relied upon. Having looked at the terms and conditions again, I

think the important part working out when the holidays in Week 34 were to take place is sufficiently clear, so I think it is fair to rely on them for this purpose. In any event, the documents tally with what Mr M says he was told when he came to book a holiday in 2017.

Mr M has pointed out the he did not have a calendar available to him at the point of sale to work out precisely when Week 34 fell as set out in the documentation. I accept that Mr M might not have tried to work out the dates for himself, but I think it is important that his allegation is that he was told something that was in direct conflict with the written terms. And, based on what I've seen, I think that is unlikely.

Mr M says that it is not his fault that the Resort has not supplied its own evidence of what was said and he also says that this shows that Barclays hasn't properly investigated the complaint. Of course I accept that Mr M can't control what information and evidence a third party provides. But, as noted above, I do have concerns with Mr M's recollections of what was said to him and there is nothing in the information available to corroborate his claim. So based on all of the evidence, I am still of the view that I don't think Mr M's claim is made out. For the avoidance of doubt, I don't think Mr M knowingly bought a holiday product he could not use, but I also don't think the Resort made false representations to him about that product.

Mr M says that Barclays did not make the offer I referred to in my provisional decision. Barclays responded to say it agreed with my provisional decision, so I think it did make such an offer. But as Mr M indicated he doesn't wish to accept it, I make no further comment on it.

My final decision

For the reasons set out above, I don't uphold Mr M's complaint against Barclays Bank UK Plc.

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

Mark Hutchings
Ombudsman