

## **The complaint**

Mrs P complains Clydesdale Bank Plc trading as Virgin Money (“Clydesdale”) turned down a claim she made under section 75 of the Consumer Credit Act 1974 (“CCA”). Mrs P’s husband, Mr P, has represented her in this complaint and has been closely involved in the background events leading up to it. Where I refer to things said or done by Mrs P this should be taken also to mean anything said or done by Mr P.

## **What happened**

I issued a provisional decision on Mrs P’s case on 29 April 2022 in which I explained that I was minded to uphold her complaint. All parties to the complaint are familiar with the history so I will outline briefly the background and my provisional decision.

### *The background*

- Mrs P paid for a company called “RAC” to release her from a timeshare-like product and, it was said, pursue a claim or class action for compensation for the mis-selling of the timeshare. She paid a total of £6,555 for this service, including a deposit on her Clydesdale credit card. The deposit was paid to “RAM”.
- RAC released Mrs P from her timeshare by sending her timeshare company a letter she had signed asking to be released from it. Mrs P later discovered this was something her timeshare company would have allowed her to do for free. RAC didn’t pursue a compensation claim or class action.
- Mrs P brought a claim against Clydesdale under section 75 of the CCA, alleging misrepresentation and/or breach of contract by RAC. Clydesdale said the paperwork Mrs P had signed made no mention of a compensation claim or class action, and that RAC had fulfilled its contractual obligations to her by releasing her from her timeshare. It declined her claim and rejected her complaint about it.
- The matter was referred to this service. We considered the technical criteria which needed to be met for a section 75 claim to be successful were not in place, specifically there was not a valid debtor-creditor-supplier (“DCS”) agreement because Mrs P had used her credit card to pay RAM and not RAC and these were different companies. Mrs P disagreed with this conclusion and asked that an ombudsman review her case.

### *My provisional decision*

I could summarise my provisional findings as follows:

- So long as certain technical criteria are met, a consumer can bring a claim against their credit card provider under section 75 of the CCA for a breach of contract or misrepresentation by a supplier of goods or services purchased using the credit card.
- One of the technical criteria was the DCS agreement. A simple way of explaining

this, was that you generally needed to pay the company responsible for a misrepresentation of breach of contract, using your credit card, to be able to make a claim under section 75. Paying a different company could cause there not to be a valid DCS agreement.

- However, it appeared that RAC and RAM were in fact likely to be trading names of a third company, "FSL", rather than companies in their own right. Investigations into international companies databases as well as a payment service provider which processed payments for RAC had led me to this conclusion. I thought Mrs P had likely contracted with, and had a potential claim against, the same company she had paid using her credit card, so there was a valid DCS agreement.
- While accepting that the written contract with RAC did not promise very much, I thought it nevertheless likely that it had misrepresented certain matters to Mrs P. I noted Mrs P's testimony had been very clear and detailed, which assisted her case. I thought RAC had misrepresented the level of work required to release her from the timeshare and the likely costs. It had included costs which it knew, or would have been expected to know, would not be required for the release. I didn't think Mrs P would have agreed to pay such a large price if she'd been given accurate information about this.
- More importantly, I also concluded RAC had told Mrs P it would be pursuing a compensation claim or class action against her timeshare company for mis-sale, and that she would recover tens of thousands of pounds, when it likely had no such intention. I noted that the scenario bore the hallmarks of a well-known scam targeting timeshare owners, which had been warned about by various reputable authorities. I also noted that it was not the first time I had seen a complaint involving RAC, in which the company was alleged to have told consumers it would pursue compensation claims and had then failed to do so. RAC's own denials and later partial acceptance that it would have discussed a compensation claim, in an email chain with Mrs P, did not help its case.
- Ultimately, I thought Mrs P had entered into her contract with RAC as a result of RAC's misrepresentations about the work involved in releasing her from her timeshare, the price of doing so, and its intentions to pursue a compensation claim or class action. Due to the operation of section 75 of the CCA she could hold Clydesdale liable for these misrepresentations and so the bank had acted unfairly in declining her claim.

I said that I was minded to direct Clydesdale to reimburse all payments made towards the contract. I didn't think a deduction should be made from the reimbursement to account for the fact RAC had actually released Mrs P from the timeshare. I thought it was difficult to assign a value this service. I also didn't think any additional compensation should be paid for the fact that Mrs P had lost her timeshare, which she could have benefited from (for example by taking holidays) had it not been relinquished back to her timeshare company. I noted that retention of the timeshare would likely have come with additional annual costs and that not having to pay these broadly cancelled out any benefits lost. I said I intended to direct Clydesdale to take the following actions:

- Refund the amount of £1,805.88 paid on Mrs P's credit card, along with any fees, charges or interest incurred as a result of the payment being made on the card.
- Reimburse the amount of £4,749.12 Mrs P paid by bank transfer.

- Pay 8% simple interest per year\* on top of the above refunds, calculated from the date Mrs P renewed her section 75 claim with Clydesdale Bank Plc in October 2019, to the date the refunds are made.
- Remove all negative credit file reporting (if any) relating to the payment made on the credit card.

\*If Clydesdale Bank Plc considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mrs P how much it's taken off. It should also give Mrs P a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

### *The responses from Mrs P and Clydesdale*

Mrs P responded to my provisional decision to say she agreed with it. Clydesdale did not reply to the provisional decision by the deadline of 13 May 2022 for further submissions and had still not replied at the time of writing.

The case has now been returned to me to decide.

### **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.

Neither party to the complaint has put forward any new evidence, comments or arguments for me to consider. It follows that I see no reason to change my provisional findings and I therefore adopt the same findings and redress directions, as summarised above, as part of my final decision.

### **My final decision**

For the reasons explained above, I uphold Mrs P's complaint and direct Clydesdale Bank Plc to take the following actions:

- Refund the amount of £1,805.88 paid on Mrs P's credit card, along with any fees, charges or interest incurred as a result of the payment being made on the card.
- Reimburse the amount of £4,749.12 Mrs P paid by bank transfer.
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Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs P to accept or reject my decision before 14 June 2022.

Will Culley  
**Ombudsman**