

The complaint

Mr D complains that MBNA Limited won't refund to him the money that he and his wife paid for a holiday product. He's being represented in his complaint by a claims management company.

What happened

Mr D and his wife entered into a vacation plan purchase agreement in November 2014 to buy an interest in a timeshare project. The total price payable under the agreement was US\$41,089 and Mr D paid a 10% deposit using his MBNA credit card. The agreement says that the balance was to be financed and further payments were paid from Mr D's MBNA credit card accounts.

Mr D's representative made a claim to MBNA in July 2019 under section 75 of the Consumer Credit Act 1974. It said that the membership had been misrepresented to Mr D and his wife and that the holiday company had breached the contract. MBNA declined the claim because it said that there was no evidence that a misrepresentation or breach of contract had occurred. Mr D wasn't satisfied with its response so a complaint was made to this service that the holiday company was in breach of the contract by misrepresenting the contract to Mr D and his wife and breaching the EU Timeshare Directive.

Our investigator didn't recommend that Mr D's complaint should be upheld as she didn't think that MBNA's decision to turn down his claim was unfair or unreasonable. She wasn't persuaded that there was a misrepresentation at the time of sale and she didn't think that the holiday company had breached the contract agreed between it and Mr D.

Mr D's representative, on his behalf, has asked for this complaint to be considered by an ombudsman. Mr D says that he doesn't accept our investigator's recommendation as extremely high stress sales models were applied to him and his wife so they felt that they had no option but to sign the contract and a solicitor who checked the contract says that it was not done correctly with many errors and was invalid so he sent the holiday company documents cancelling the contract. He also says that MBNA continued to allow payments from his credit card accounts after he had asked it to stop them and when one account ended it automatically moved payments to another account without permission.

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 our investigator that Mr D's complaint shouldn't be upheld for these reasons:

- Mr D's claim was made under section 75 which 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 D's claim under section 75 is that there's been a breach of contract by the holiday company and that the membership was misrepresented to him and his wife and that they wouldn't have bought it if it hadn't been misrepresented to them;
- I'm not determining the outcome of that claim in this decision as only a court would be able to do that but I'm considering whether or not MBNA's response to his claim was fair and reasonable in the circumstances;
- Mr D has said in response to our investigator's recommendations that the holiday company applied extremely high stress sales models to him and his wife and that MBNA continued to allow payments from his credit card accounts after he had asked it to stop them – but those issues weren't included with the claim that his representative made to MBNA in July 2019 or in the complaint form that he signed – so I'm unable to consider those issues as part of this complaint;
- if Mr D wants to complain about those issues he should first complain to MBNA about them and then, if he's not satisfied with its response, he may be able to make a separate complaint to this service;
- Mr D's complaint form says that the holiday company breached the EU Timeshare Directive – but neither the holiday company nor the holiday product is based in the EU so I don't consider that the EU Timeshare Directive would be applicable in these circumstances;
- Mr D's complaint form also says that the holiday company was in breach of the contract by misrepresenting the contract to Mr D and his wife, and his representative's letter to MBNA in July 2019 describes the misrepresentations that it says were made to Mr D and his wife, including:
 - they were advised that by becoming members of the resort they would be able to book holidays more easily and readily;
 - they were assured that they would continue to receive the same service they witnessed during the tour of the resort; and
 - they were assured that the resort was exclusive to members;
- that letter says that Mr D and his wife have found that they're unable to get the availability that they require, the resort's availability has become more restricted and they are no longer able to reserve the accommodation to the same luxury standard, and the resort can be booked by any member of the public using third party booking agencies;
- Mr D and his wife signed a vacation plan purchase agreement in November 2014 and I've only been provided with the first and third pages of the six page agreement and not the general terms and conditions, the declaration of condominium for the resort, the declaration of covenants, conditions, and restrictions for vacation plan ownership in the resort, the club by-laws or the club rules, all of which are referred to in the agreement;
- Mr D's representative says that when Mr D and his wife enquired about availability they were advised that they would need to book a year in advance to get the holidays that they desired – but I've seen no evidence to show that they complained to the holiday company about those issues or the holiday product being misrepresented to them and they didn't make a claim to MBNA about those issues until July 2019, nearly five years after they'd signed the agreement;
- I'm not persuaded that there's enough to show that Mr D and his wife were advised that by becoming members of the resort they would be able to book holidays more easily and readily or that they were assured that they would continue to receive the

same service they witnessed during the tour of the resort or that they were assured that the resort was exclusive to members;

- I'm not persuaded that there's enough evidence to show that the holiday product was misrepresented to Mr D and his wife by the holiday company or that they were induced into entering into the purchase agreement to buy the holiday product by any such misrepresentations;
- nor am I persuaded that there's enough evidence to show the purchase agreement is incorrect, contains errors or was invalid or that the holiday company has breached the purchase agreement – and Mr D hasn't provided evidence to show that he sent the holiday company documents cancelling the purchase agreement or that he was entitled to cancel the purchase agreement in these circumstances;
- I sympathise with Mr D and his wife for the issues that they've had with their holiday product but I consider that MBNA's response to their section 75 claim was fair and reasonable in the circumstances; and
- I find that it wouldn't be fair or reasonable for me to require MBNA to refund to Mr D any of the money that he and his wife paid for the holiday product, 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 D's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 20 June 2023.

Jarrold Hastings
Ombudsman