

The complaint

Mr M complains through his representative (B) that Barclays Bank UK PLC trading as Barclaycard didn't fairly or reasonably deal with her complaint under Section 75 of the Consumer Credit Act 1974 (CCA) in respect of a holiday product purchased on 10 September 2014.

The complaint has been set up in Mr M's name alone as it was his credit card account (albeit by Mrs M using her card on that account) that was used to fund the purchase. I acknowledge that the holiday product was purchased in Mr and Mrs M's names.

What happened

Mr and Mrs M say they contracted with the supplier, S, to arrange the sale of their previous timeshare¹. They also say that they signed a purchase agreement on 10 September 2014 that offered them one week of holiday accommodation in the Canary Islands and the choice of one week of holiday accommodation in Europe or elsewhere in the world. The total cash price looks like it was £5,000 – £2,500 of which Mr M paid using his credit card at the time of sale.

In addition to entering into the purchase agreement, Mr and Mr M also signed a form for a free gift of 5 European holidays.

Mr and Mr M say that they applied for a holiday on 14 August 2016. But as it was only available to persons between the ages of 25 and 65, they didn't qualify as they were both over that age in August 2016. So, they say that they have not received any benefit from the contract signed with S because holidays are not available to them given their age.

Barclays says it never received a complaint from Mr and Mr M about S, though it did receive complaints about two other companies that they had instructed (without success) to deal with relinquishing their existing timeshare. B says that it had lodged a specific complaint about S on 4 December 2017. But Barclays says it never received such a letter. So, it opened a new complaint in March 2019 and offered Mr and Mr M a payment of £100 to the reflect the time it had taken to register their complaint about S. And as far as I can see, it received all the evidence sent to us by B, however it hasn't formally responded to the complaint.

An investigator reviewed the complaint. He said that although the terms and conditions supplied by B demonstrated that a prospective holiday to be provided by a third party ('GT') wasn't available to persons over the age of 65, those terms appeared to be linked to a holiday application in 2016 rather than the contract signed in 2014. And as it's not clear what the age limit in question had to do with Mr M's ability to use the holiday club Mr and Mrs M joined in 2014, he didn't think Barclaycard had to do anything to put things right in this complaint

B didn't agree and sent us further documents that it asserts prove Mr M's claim.

As an informal resolution couldn't be reached, the matter was passed to me for further

consideration.

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.

This decision concerns solely the sale of the timeshare to Mr and Mr M, rather than any allegations concerning their desire to relinquish the timeshare, which has been dealt with elsewhere. I understand that¹ B managed to relinquish Mr and Mr M's existing timeshare in 2018.

Mr M's claim is brought under s75 CCA. This essentially sets out that a borrower under a credit agreement has equal rights against the lender as against the supplier in respect of misrepresentation or breach of contract.

It hasn't been made clear exactly what Mr and Mrs M's claim is under s75 CCA, but I think it reasonable to consider it as a claim for a breach of contract i.e. that Mr and Mr M entered into a contract that the supplier couldn't perform i.e. in supplying holidays.

Mr and Mrs M signed a document headed "*Application for the exclusivity of [S] Travel*"- that recites that a deposit was paid of £2,500. Mr M's credit card statement shows a payment to S of just over that figure on 10 September 2014. That document was accompanied by some terms and conditions, but those don't mention an age limit. At the same time they signed a document headed "*European Holidays*" which stated "*I/we request to receive the free gift of 5 European holidays*". I've seen no other evidence that Mr and Mr M took up the free holiday offer or applied for a holiday until 2016.

On 14 August 2016, having received a voucher from S, Mr and Mr M applied for a holiday using a form headed "*Golden TC Holiday reservation*". B has sent to us some further terms and conditions which appear to relate to that reservation application. These state: "*The holiday is open to home owning couples, married (or co-habiting for three years or more) with members in gainful employment and whose joint income exceeds £20,000 pa, between the ages of twenty-five and sixty-five*". As Mr and Mr M were both retired and over the age of 65 it would appear that they weren't eligible to take up that holiday.

But I think that those later terms and conditions only apply to the holiday relating to the voucher, since they say "*the offer is not transferable in whole or in part and may only be used by the recipient family once*". I haven't seen any other evidence from the time of the 2016 holiday application which confirmed that Mr and Mr M weren't eligible to take up the holiday. Nor have I seen any other evidence that the holiday club wasn't available to Mr and Mr M at all or that they attempted to book a different holiday.

From the evidence I've seen the holiday product appeared to offer exclusive deals on holidays and a certain number of free holidays. B has only shown to us that Mr and Mr M attempted to make a reservation for a holiday pursuant to an offer on one occasion but didn't (or weren't able to) take up the holiday offered. So I can't say that S was in breach of contract, and as a result I can't uphold the complaint that Barclays failed to deal with the claim under s75 CCA.

So far as Barclays actually dealing with the complaint, is concerned, it did acknowledge delays in March 2019 and offered £100 for the inconvenience and delay. Regrettably the matter was unable to be dealt with by us at that time, so Barclays' further review of the complaint hasn't taken place. Our investigator put it to B that it could continue to assert the claim against Barclays under s75 CCA, but B chose to refer the matter to an ombudsman. I

think for the delays in setting up the complaint in respect of S, that Barclays' offer of £100 is reasonable. If Mr M wants to take up that offer he, or B should contact Barclays directly.

My final decision

I don't uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 6 February 2023.

Ray Lawley
Ombudsman
