

The complaint

Mrs T's complaint is, in essence, that Barclays Bank UK PLC trading as Barclaycard (the 'Lender') acted unfairly and unreasonably by deciding against paying a claim under Section 75 of the CCA.

What happened

Mrs T purchased a share in property from a timeshare provider (the 'Supplier') on 13 April 2016 (the 'Time of Sale'). She entered into an agreement with the Supplier to buy a participation or share in property at a cost of £16,000 (the 'Purchase Agreement'). We have received limited documentation but it appears that Mrs T was entitled to income from her share and a share in the net sale proceeds of a property named on her Purchase Agreement (the 'Allocated Property') at some point.

Mrs T paid for her share in the property using three credit cards. She paid £11,221.55 using her credit card with the Lender. Mrs T received dividends of £352 and £708 in 2017 and 2018 respectively. The purchase was made jointly with her husband, but as the credit card is in Mrs T's name she is the eligible complainant and for simplicity, I will refer to her as the sole owner in this decision.

Mrs T, who subsequently engaged a professional representative (the 'PR') – wrote to the Lender on 30 September 2019 (the 'Letter of Complaint') to complain about:

1. Misrepresentations by the Supplier at the Time of Sale giving her a claim against the Lender under Section 75 of the CCA, which the Lender failed to accept and pay.
2. A breach of contract by the Supplier giving her a claim against the Lender under Section 75 of the CCA, which the Lender failed to accept and pay.

(1) Section 75 of the CCA: the Supplier's misrepresentations at the Time of Sale

Mrs T says that the Supplier made a number of pre-contractual misrepresentations at the Time of Sale – namely that the Supplier:

1. Told her she was purchasing a share in a property and not a timeshare.
2. Told her that she could sell at any time.

Mrs T says that she has a claim against the Supplier in respect of one or more of the misrepresentations set out above, and therefore, under Section 75 of the CCA, she has a like claim against the Lender, who, with the Supplier, is jointly and severally liable to Mrs T.

(2) Section 75 of the CCA: the Supplier's breach of contract

Mrs T says that the Supplier breached the Purchase Agreement because it went into liquidation in 2020.

As a result of the above, Mrs T says that she has a breach of contract claim against the

Supplier, and therefore, under Section 75 of the CCA, she has a like claim against the Lender, who, with the Supplier, is jointly and severally liable to Mrs T.

The legal and regulatory context

In considering what is fair and reasonable in all the circumstances of the complaint, I am required under DISP 3.6.4R to take into account: relevant (i) law and regulations; (ii) regulators' rules, guidance and standards; and (iii) codes of practice; and (where appropriate), what I consider to have been good industry practice at the relevant time.

I will refer to and set out several regulatory requirements, legal concepts and guidance in this decision, but I am satisfied that of particular relevance to this complaint is:

- The CCA (including Section 75).
- The law on misrepresentation.
- The Timeshare Regulations.
- The [UTCCR / CRA].
- The CPUT Regulations.

Good industry practice – the RDO Code

The Timeshare Regulations provided a regulatory framework. But as the parties to this complaint already know, I am also required to take into account, when appropriate, what I consider to have been good industry practice at the relevant time – which, in this complaint, may include the Resort Development Organisation's Code of Conduct dated 1 January 2010 (the 'RDO Code').

I issued a provisional decision as follows:

"I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

And having done that, I do not currently think this complaint should be upheld.

But before I explain why, I want to make it clear that my role as an Ombudsman is not to address every single point that has been made to date. Instead, it is to decide what is fair and reasonable in the circumstances of this complaint. So, if I have not commented on, or referred to, something that either party has said, that does not mean I have not considered it.

What is more, I have made my decision on the balance of probabilities – which means I have based it on what I think is more likely than not to have happened given the available evidence and the wider circumstances.

Section 75 of the CCA: the Supplier's misrepresentations at the Time of Sale

The CCA introduced a regime of connected lender liability under section 75 that affords consumers ("debtors") a right of recourse against lenders that provide the finance for the acquisition of goods or services from third-party merchants ("suppliers") in the event that there is an actionable misrepresentation and/or breach of contract by the supplier.

In short, a claim against the Lender under Section 75 essentially mirrors the claim Mrs T could make against the Supplier.

Certain conditions must be met if the protection afforded to consumers is engaged, including, for instance, the cash price of the purchase and the nature of the arrangements between the parties involved in the transaction. The Lender does not dispute that the relevant conditions are met in this complaint. And as I'm satisfied that Section 75 applies, if I find that the Supplier is liable for having misrepresented something to Mrs T at the Time of Sale, the Lender is also liable.

This part of the complaint was made for several reasons that I set out at the start of this decision. They include the suggestion that the product had been misrepresented by the Supplier because Mrs T was told that she was buying an interest in a specific piece of "real property" when that was not true. However, telling prospective members that they were buying a fraction or share of one of the Supplier's properties was not untrue. Mrs T's share in the Allocated Property was clearly the purchase of a share of the net sale proceeds of a specific property. And while the PR might question the exact legal mechanism used to give them that interest, it did not change the fact that she acquired such an interest.

As for the rest of the Supplier's alleged pre-contractual misrepresentations, while I recognise that Mrs T has concerns about the way in which the product was sold, she has not persuaded me that there was an actionable misrepresentation by the Supplier at the Time of Sale for the other reasons she alleges. And I say that because:

There is a lack of supporting evidence to show what the Supplier told Mrs T. The limited documentation I have seen shows that she was buying a share in a property in Spain which is a typical feature of fractional timeshare. It is not clear to me how the sale of a share in property from which she derived dividends could be said to have been misrepresented.

As for the issue of her ability to sell the agreement makes no reference to selling the share she acquired. I presume there is other documentation and despite asking for sight of this PR has not supplied any further information. Therefore, it is difficult for me to be able to reach any conclusion that there was an actionable misrepresentation regarding the ability to dispose of the share.

What's more, as there's nothing else on file that persuades me there were any false statements of existing fact made to Mrs T by the Supplier at the Time of Sale, I do not think there was an actionable misrepresentation by the Supplier for the reasons she alleges.

For these reasons, therefore, I do not think the Lender is liable to pay Mrs T any compensation for the alleged misrepresentations of the Supplier. And with that being the case, I do not think the Lender acted unfairly or unreasonably when it dealt with the Section 75 claim in question.

Section 75 of the CCA: the Supplier's breach of contract

I've already summarised how Section 75 of the CCA works and why it gives Mrs T a right of recourse against the Lender. So, it isn't necessary to repeat that here other than to say that, if I find that the Supplier is liable for having breached the Purchase Agreement, the Lender is also liable.

Mrs T says that the Supplier breached the Purchase Agreement because it went into liquidation in 2020. I can understand why the PR is alleging that there was a breach of the Purchase Agreement as a result. However, neither Mrs T nor the PR have provided evidence to demonstrate that she no longer:

1. holds a share in the property;

2. is entitled to a share in the net sales proceeds of the Allocated Property when her Fractional Club membership ends.

Mrs T also says that the Supplier breached the Purchase Agreement because there is no guarantee that she will receive her share of the net sale proceeds of the Allocated Property. I understand that she is saying that she fears that, when the time comes for the Allocated Property to be sold, she will not receive her share of the sales proceeds. However, it would seem that any breach of contract (if that occurs) has not been established at this point.

Mrs T has supplied a copy of an email from what appears to be an action group but which is not addressed to her or her husband. This does not demonstrate what happened to her interest in the asset following the liquidation. Having reviewed the brief contract I can see nothing which shows that there has been a breach. It states:

"The Seller sells and conveys to the Purchaser who buys and acquires ownership of 1 company Participation, number 3 representing 10% of the company capital of [X], free from any type of levy, encumbrance or third party rights."

It would appear that the contract was satisfied in that Mrs T gained ownership of the participation or share and I cannot see that the contract was breached by subsequent events. I have not identified that the Supplier agreed to offer anything other than the sale of the participation or share and it delivered this. There may be further documentation regarding the sale that has a bearing on the claim, but despite several requests I have received nothing that would cause me to change my opinion.

Overall, therefore, from the evidence I have seen to date, I do not think the Lender is liable to pay Mrs T any compensation for a breach of contract by the Supplier. And with that being the case, I do not think the Lender acted unfairly or unreasonably when it dealt with the Section 75 claim in question.

Collective Investment Scheme ("CIS")

In response to our Investigator's findings, the PR said, if it's accepted the purchase wasn't for a timeshare product, it therefore constitutes a CIS under Section 235 of FSMA. And as a consequence, a breach of Section 19 of FSMA.

The PR implies this led to an unfair debtor creditor relationship. At the outset, I've seen no evidence to support that allegation. Further, the alleged breach of Section 19 of FSMA and any resultant unfairness appears to constitute a new allegation that wasn't included within the original claim.

And a breach of FSMA in the way presented doesn't, as I understand, constitute misrepresentation or breach of contract under Section 75. In the event that Mrs T wishes to pursue that allegation, I believe it should be presented as a separate claim and/or complaint.

I can't see that has happened here. So, Barclays haven't been given fair opportunity to investigate and respond. Because of that, I don't believe it would be fair or reasonable for me to consider that particular allegation further as part of the complaint I'm considering here.

In conclusion, given the facts and circumstances of this complaint, I do not think that the Lender acted unfairly or unreasonably when it dealt with Mrs T's Section 75 claims. And having taken everything into account, I see no other reason why it would be fair or reasonable to direct the Lender to compensate her.

If there is any further information on this complaint that the Mrs T wishes to provide, I would

invite her to do so in response to this provisional decision.”

Both parties responded to say they had nothing to add.

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.

Given the provisional decision has been accepted by both parties I have been given no reason to alter it. As such it stands.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs T to accept or reject my decision before 27 January 2025.

Ivor Graham
Ombudsman