

complaint

Mr and Mrs C complain that Barclays Bank Plc refused to refund payments they made for a holiday club membership in 2002 and 2005.

background

Mr and Mrs C have a joint account with Barclays. In 2002 or 2003 they joined a holiday club. They say they paid a deposit of £2,000 with their Barclays debit card (and paid the balance with a loan arranged with a third party). They say that in 2005 they made another payment of £4,000 using credit provided by Barclays. They later realised that the holiday club was fraudulent and that they would receive nothing for their money. In 2017 they asked Barclays to refund their payments. Barclays told them that it was too late to raise a chargeback, so they complained to our Service. They are represented in this complaint by a claims management company.

Our adjudicator did not uphold this complaint. She said that there was no evidence that a payment of £2,000 had been made from the joint account, but even if a debit card payment had been made, it had been much too late to raise a chargeback 15 years later. She also said that there was no evidence that they had ever had a credit card with Barclays, or a point of sale loan, and so Barclays was not liable to pay them compensation under section 75 of the Consumer Credit Act 1974.

Mr C did not agree with that opinion. He said that he had only waited for so long before asking Barclays for a refund in order to give the holiday club company time to deliver on its promises. He was a victim of fraud, and he had been caused a lot of stress, so it was only fair that he should get his money back. He asked for an ombudsman's decision.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. I do not uphold it. I will explain why.

Mr and Mrs C have not provided any further evidence to show how they made the payments to the holiday club company. I have checked their bank statements for 2002 and 2003, but I cannot find any payment for £2,000 to anyone, and I cannot find any payment to the holiday club company. Barclays says it can find no record of Mr or Mrs C having had a credit card with them, and no record of any loan either (other than a loan in 2004 which appears to have been cancelled, and which does not appear to relate to the holiday club).

There is therefore no evidence that Mr and Mrs C, or either of them, used an account, a service or any credit provided by Barclays to make any of the payments to the holiday club (other than what they themselves have told us, and that is contradicted by the statements). For that reason, I am quite unable to say that Barclays ought to pay them a refund.

Even if I was satisfied that they had used a Barclays debit card, a Barclays credit card, or a Barclays loan to make the payments, it is now far too late for them to raise a chargeback or to claim a refund under section 75. Both of these procedures have time limits. A Visa chargeback must be raised no later than 540 days after the payment, and a claim under section 75 must be brought within six years of the breach of contract or misrepresentation giving rise to the claim. Both of these deadlines had long expired by 2017.

Under section 32 of the Limitation Act 1980, the six year period in which a section 75 complaint may be brought does not begin until the time when Mr and Mrs C discovered that the holiday club company had defrauded them, “or could with reasonable diligence have discovered it.” But even allowing for that, I think that the extended deadline must have expired well before 2017, given that by 2005 Mr and Mrs C were complaining to the holiday club company that they had received no benefit from membership since 2002.

I therefore find that Barclays was entitled to refuse to pay a refund to Mr and Mrs C.

my final decision

My decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr and Mrs C to accept or reject my decision before 18 July 2018. But if we don’t hear from them, then we will presume that they reject it.

Richard Wood
ombudsman