

summary of complaint

Mr F complains that the terms of a timeshare, and the loan agreement to finance it, were misrepresented to him. He says he was told he would be able to exit all agreements after two years and that this was untrue. He also says that Barclays are wrong to continue to pursue him for payment as he has repudiated the agreement and that Barclays actions amount to harassment.

Mr F's solicitor brings this complaint on his behalf.

our initial conclusions

Our adjudicator recommended that the complaint should not be upheld.

He considered that Mr F had signed an agreement, which clearly stated the cancellation rights, and that he had not provided any evidence to support his claim of misrepresentation. He also considered that Barclays did not have to accept Mr F's repudiation of the loan agreement and that in the absence of Mr F's cooperation to agree affordable repayments, Barclays was entitled to continue action to recover the debt.

Barclays accepted that conclusion, but Mr F did not. In summary, he says he does not accept liability for the debt because it was misrepresented to him and the Directors of the timeshare company have been charged and convicted of criminal activity. He also says that because he has repudiated the debt Barclays should take court proceedings rather than use credit agencies to try and collect the debt.

As no agreement has been reached this matter has been passed to me to decide.

my findings

I have considered all the available evidence and arguments from the outset, in order to decide what is fair and reasonable in the circumstances of this complaint.

I consider that there are two main elements to this complaint that I shall consider in turn, firstly was the loan agreement misrepresented and secondly has Barclays harassed Mr F?

Was the loan agreement misrepresented?

Where the evidence is incomplete, inconclusive, or contradictory, as some of it is here, I reach my decision on a balance of probabilities – that is to say, what I consider is most likely to have happened in the light of the evidence that is available and the wider surrounding circumstances.

Mr F says the marketing company has been investigated by Trading Standards and five of the Directors have been found guilty of using unfair and misleading sales practices, including *“falsely telling consumers that they could not cancel their holiday purchase contracts when they had bought them using cancellable credit agreements; misleadingly stating that the company would buy back the products at the original purchase price after two years”*.

Barclays says that that this does not conclusively prove that the agreement was misrepresented to Mr F.

I note that the specific examples of unfair and misleading sales practices highlighted by Trading Standards and the court are not the same as the misrepresentations that Mr F says applied in his case.

I have also looked carefully at the evidence that Mr F has provided to this service and I consider that some of it is contradictory. I say this because Mr F, in his letter from his representative of 1 April 2011, said that he and his wife were told *“...it would be possible to exit all agreements after two years if they were unsatisfied”*. However, more recently Mr F told our adjudicator that he was assured when he met the holiday company that he could cancel at any time.

In addition, Mr F says he signed the contracts in 2008 at the company’s office and then received them by post. And although the contract clearly sets out the cancellation rights he does not appear to have complained when he received the documents by post, instead he went on to try and book a holiday under the agreement. On balance, I do not consider that these events are consistent with the actions of someone who has been misrepresented to as Mr F has described.

Overall and on balance, I am not persuaded that I can safely conclude that the agreement was misrepresented to Mr F as he says. I say this because I consider his description of events and his actions have been inconsistent and contradictory, the examples of unfair and misleading sales practices highlighted by Trading Standards and the court are different to Mr F’s description of his situation and in any case the fact of the Director’s conviction does not demonstrate that any misrepresentation took place in Mr F’s case. Finally, I am satisfied that Mr F has signed a contract which clearly sets out the cancellation rights.

Has Barclays harassed Mr F?

Mr F’s representative says that because Mr F repudiated the debt, Barclays should have ceased its collection activity and taken the matter to court. Overall and on balance, I do not agree that it was unfair or unreasonable of Barclays to continue its collection activity because of the repudiation.

However I do consider that it was wrong to pursue the debt whilst it was investigating Mr F’s dispute.

I say this because the Office of Fair Trading has provided guidance for businesses engaged in the recovery of consumer credit debts, July 2003 (updated November 2012). This guidance makes it clear that business's should cease recovery action while they investigate a "*reasonably queried or disputed debt when the debtor has, or appears as if he may have, valid grounds for the query or dispute*" (page 34, paragraph K). Therefore I consider that Barclays should have ceased recovery action from the date of the letter of repudiation, 1 April 2011, to the date of its final response on 29 July 2011.

In the circumstances, I consider that Barclays should compensate Mr F for its error in pursuing him for this debt whilst it was investigating his dispute of the debt, and conclude that £100 is fair and reasonable compensation.

Finally, Mr F's representative in his summary document to this service, dated 8 December 2011, refers to this service as a regulator. This service is not a regulator, our role is to provide an informal dispute resolution service.

my final decision

For the reasons I have given, my final decision is that I uphold this complaint in part, and I order Barclays to pay Mr F £100 compensation for the distress and inconvenience it has caused by pursuing him for this debt whilst it was investigating his dispute of the debt.

Garry Hunter
ombudsman