

complaint

Mr M and Ms B complain that Ulster Bank Limited won't refund to them the money that they paid for a holiday club membership. Their complaint is made against Ulster Bank under section 75 of the Consumer Credit Act 1974.

background

Mr M and Ms B took out a loan in 2002 with a bank that is now in the same banking group as Ulster Bank and used it to pay for a holiday club membership. They complained to Ulster Bank last year that the membership had been misrepresented and mis-sold to them and they claimed a refund from Ulster Bank under section 75. It said that they'd used a loan to pay for the holiday club membership and that section 75 didn't apply. Mr M and Ms B weren't satisfied with its response so complained to this service.

The investigator didn't recommend that this complaint should be upheld. Ms B had told her that they'd taken out a loan to pay for the holiday club membership – and that the loan was paid into Mr M's account and he used a cheque from his bank account to pay for it. The investigator concluded that, because of the way that the payment was processed, Mr M and Ms B weren't protected under section 75.

Mr M has asked for this complaint to be considered by an ombudsman. He says, in summary, that the investigator's conclusion is based on what Ms B has said but she's never had anything to do with any of the financial business and that, when she was questioned, she was recovering from a serious operation. And he says that the holiday club never provided the services promised and he believes that the money paid to it is rightfully his.

my findings

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

In certain circumstances, section 75 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. Those circumstances include that the goods or services must be purchased using credit and there must be a direct relationship between the debtor, the creditor and the supplier.

Mr M and Ms B took out a bank loan in December 2002. The loan statement shows that it was a drawdown facility so Mr M and Ms B would've been able to take money from the loan, up to the full loan amount, when they needed it. And I understand that the loan was repaid in 2012. Mr M says that he used that loan to pay for the holiday club membership. Because these events took place in 2002, only limited evidence about the loan is available. But Ms B's recollection is that Mr M used a cheque to pay for the membership. And I consider it to be more likely than not that the loan was paid into his account and that he used a cheque drawn on his bank account to pay for the holiday club membership. I'm not persuaded that there's enough evidence to show that the loan was paid directly to the holiday club – so I don't consider that there's enough evidence to show that Mr M used credit to pay for the membership. And, as he didn't pay for the holiday club membership using credit, section 75 doesn't apply and he's not entitled to the protection that it provides.

And I find that it wouldn't be fair or reasonable in these circumstances for me to require Ulster Bank to refund to Mr M and Ms B, under section 75, the money that they paid for the holiday club membership – or to take any other action in response to their complaint.

my final decision

For these reasons, my decision is that I don't uphold Mr M and Ms B's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M and Ms B to accept or reject my decision before 20 July 2018.

Jarrold Hastings
ombudsman