

complaint

Mr R complains that Barclays Bank Plc trading as Barclaycard will not refund the purchase of a holiday club membership he made using a credit card. He brings his claim under Section 75 of the Consumer Credit Act 1974.

background

In 2010 Mr R purchased a holiday club membership for £8,300. He paid £600 of it using his Barclaycard. As part of the deal Mr R traded in an existing timeshare.

Mr R says that during the sales presentation he was promised that he would receive 100% of his money back after 51 months through a cashback scheme. He says that the cashback certificate he received does not guarantee anywhere near what he was promised – and had he known this he would not have entered the contract.

Our adjudicator was persuaded that Mr R entered the contract because he was promised 100% cashback by the marketer of the holiday club - which would eventually reimburse him for the cost of membership and the timeshare he traded in. He was satisfied that Mr R would not be receiving the promised cashback and therefore found there had been a misrepresentation by the marketer. He explained that our general approach to misrepresentation would be to put Mr R back into the position he would have been in had he not entered the contract. Therefore, he recommended that Barclaycard refund Mr R in full.

Barclaycard has offered Mr R a 75% refund of the purchase price. In summary, it says that there is no evidence that he had completed the initial registration for the cashback properly. And it says that as the claim date for the cashback is not until 2015, it is currently unclear if it will be paid, and what percentage Mr R may receive.

Mr R has asked this matter to be reviewed– he feels he is entitled to a full refund.

my findings

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

misrepresentation

It appears that the marketer did provide Mr R with a holiday club membership and take ownership of his existing timeshare as agreed – however, when considering a finding of misrepresentation under section 75 I can look at representations made by the marketer during the sale.

For me to uphold the claim on the basis of misrepresentation I would need to determine that the marketer made a false statement which induced Mr R into entering an agreement he would not have entered otherwise.

I find Mr R's description of events at the sales presentation to be detailed and credible. He places particular emphasis on the attraction of the cashback promotion. He says the promotion was important to him and from his compelling submissions I am satisfied that this was the case.

I am persuaded that Mr R was told by the marketer that he would receive 100% guaranteed cashback after 51 months, and that it was this which was a material factor in inducing him into the contract. I consider that if it were not for this offer Mr R would not have entered the contract.

Barclaycard has indicated that Mr R may still receive the promised cashback as the claim date for the cashback is not until 2015. It has also said that Mr R may not have satisfied the pre-claim requirements. However, having inspected the cashback voucher I find that Mr R is not guaranteed to receive the cashback amount he was promised at the sales presentation in any event. Even if he satisfied all the claim requirements the amount guaranteed on the back of the certificate is only 5.7%. I consider it unlikely that a claim will result in Mr R receiving the amount he was guaranteed at the sales presentation.

Overall and on balance, I am satisfied that there has been a false statement made by the marketer which induced Mr R into a contract he would otherwise not have entered. Therefore, I am satisfied there has been a misrepresentation in this instance.

Barclaycard has argued that its offer of a 75% refund is fair and reasonable in the circumstances. However, our normal approach to misrepresentation is to put the consumer back in the position they would have been in had they not entered the contract in the first place. Furthermore, from Mr R's submissions I am satisfied that he has not had any significant benefit from the holiday club membership during the period he has owned it. Overall, in these particular circumstances I find it fair and reasonable that Barclaycard refund Mr R in full plus simple interest where appropriate.

As part of the settlement Mr R forfeits any right to claim on the cashback certificate in 2015. And normally in these circumstances I would direct Barclaycard to take ownership of the holiday club membership – however, I understand that the holiday club operator is no longer trading so this would not be applicable in this case.

my final decision

I direct Barclays Bank Plc trading as Barclaycard to:

- rework Mr R's credit card account as if the £600 card payment had not been made - any overpayment made by the consumer should be refunded to him, adding interest calculated at a rate of 8% per year simple, from the date of the overpayment to the date of settlement;
- refund Mr R the remaining £7,700 adding interest at 8% per year simple from the date the payment was made to the date of settlement.

Barclaycard should deduct basic rate tax from the interest element of my award and provide Mr R with a certificate of tax deduction so he can claim a refund, if appropriate.

Mark Lancod
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