

complaint

Mr C complains that Lloyds Bank PLC won't refund him for a mis-sold holiday villa he paid for using his credit card.

background

I set out the background to this complaint and my initial findings in my provisional decision, a copy of which is attached and forms part of this final decision. In my provisional decision I explained why I was likely to not uphold Mr C's complaint and I invited both parties to let me have anything they thought was relevant in response.

Lloyds said it had nothing further to add.

Mr C said he disagreed with my provisional decision. He said he still felt that Lloyds hadn't held up their side of the bargain by protecting him against fraud. He said he wasn't told that if a third party was involved in the transaction any protection would be null and void. He said if he'd known about this so called clause, he'd have just used his bank debit card to pay the money direct from his bank account.

my findings

I have reconsidered the relevant issues as I set out in my provisional decision as well as all the evidence from the outset in order to decide what is fair and reasonable in the circumstances.

It's unfortunate that Mr C was the victim of a scam, so I understand his disappointment with my findings. But he's not said anything to change my mind. I've reached the same conclusions as set out in my provisional decision and for the same reasons.

As I set out in my provisional decision, there are certain conditions that must be met to be afforded protection under section 75 of the Consumer Credit Act 1974. And in this particular case, one of those important conditions hasn't been met. Because of this, it's not fair for me to tell Lloyds to make good Mr C's loss.

In closing I'd add that if Mr C had used his debit card to pay for the holiday villa, then in all likelihood he'd find himself in the same position.

my final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 9 November 2015.

Paul Featherstone
ombudsman

copy of provisional decision

complaint

Mr C complains that Lloyds Bank PLC won't refund him for a mis-sold holiday villa he paid for using his credit card.

background

Mr C booked a foreign holiday villa online. He paid the rental fee upfront using his Lloyds credit card. But he used the services of a third party international payment service provider to facilitate payment to the villa management company. Mr C says he did this to get a better exchange rate.

The villa booking turned out to be a scam. So Mr C complained to Lloyds saying it was jointly liable under section 75 of the Consumer Credit Act 1974. He asked for his money back.

Lloyds said it couldn't help Mr C because there was no valid debtor-creditor-supplier relationship needed to bring a claim under section 75.

The adjudicator said we didn't have the authority to look into the matter. She said for us to consider a complaint under section 75 of the Consumer Credit Act 1974 there must be an unbroken debtor, creditor and supplier chain / relationship. She said in this case the chain is broken because Mr C made payment to the payment service company and not the supplier of the villa.

Mr C disagrees, so the complaint comes to me for review.

my provisional findings

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

Firstly I'd like to clarify that Mr C's complaint is one we can consider within our rules - there's nothing about it which suggests otherwise. I think the adjudicator was wrong to say we don't have the authority to consider it.

As such I'm happy to consider the substance of Mr C's complaint. But having done so, I'm sorry to disappoint Mr C, I don't intend to uphold it. I'll clarify why I think this below.

It's not in dispute that Mr C didn't get what he paid for. But for me to fairly say that Lloyds can help Mr C under section 75 of the Consumer Credit Act 1974 for any breach of contract or misrepresentation on the part of the supplier of the holiday villa, there are some strict conditions that must be met. One of these conditions concerns the relationship between the parties to Mr C's transaction.

It must be shown that a debtor (Mr C) - creditor (Lloyds) - supplier (the person(s) supplying the villa) relationship existed – there must be a valid chain connecting them. In other words Mr C must show that he used his Lloyds credit card to pay the *same* person with whom he contracted to rent the villa.

But in this case, Mr C used the services of a third party money transfer company to facilitate payment to the supplier. So Mr C's '*payment*' was made to the money transfer company – not the supplier of the villa.

This means there's no valid debtor - creditor - supplier relationship in this case; the necessary condition hasn't been met.

I can understand Mr C's frustration and disappointment with this matter – he's paid out a lot of money for something he didn't get. But it's not fair for me to ask Lloyds to help Mr C in this case because an important condition to allow me to do so hasn't been met.

my provisional decision

I think this is a complaint we can consider. But for the reasons I've set out above, I don't intend to uphold it.

Paul Featherstone
ombudsman