

## **complaint**

Mr M complains that a timeshare contract he entered into was misrepresented to him and breached. He has brought his complaint against Barclays Bank Plc (trading as Barclaycard) under section 75 of the Consumer Credit Act 1974.

## **background**

In 2008 Mr M bought a timeshare. He paid the deposit and final payment using his Barclaycard. He understood the timeshare ownership had been conveyed to him. This meant he could pass it on easily. And he also understood he could easily exchange the time he'd bought for almost any other place or time. This was because his timeshare was in a popular overseas holiday area.

Mr M has brought a claim under section 75. He says he wasn't able to exchange his weeks for good quality accommodation elsewhere, when and where he wanted it, as promised. And he's since found out the timeshare contract doesn't comply with local laws. So he thinks this means the title is defective, which might make it difficult to pass on. So there must have been a misrepresentation by the timeshare company.

Barclaycard rejected Mr M's complaint. It said there wasn't any evidence the timeshare had been misrepresented to Mr M. He'd had a cooling off period after he'd signed the original contract. He'd been able to exchange the timeshare, even if the times and locations weren't acceptable to him. And in 2013 he'd been offered the chance to relinquish the property without any further obligation to the timeshare resort. It said the issue about his contract not complying with local laws was known as 'a breach of statutory duty'. This didn't mean there had been a breach of contract or misrepresentation.

Our adjudicator didn't uphold the complaint. He didn't consider there had been a breach of contract or misrepresentation. The contract didn't suggest there was any guarantee the property could be exchanged easily or on a flexible schedule. He didn't consider Mr M's concerns about the 2008 contract complying with 2013 local laws meant his claim against Barclays should succeed. This was a civil matter between him and the timeshare company.

Mr M didn't agree, and asked for a review. He enclosed the relevant local laws for 2008, and said his contract didn't contain particular elements. He isn't sure he can now pass on the timeshare, so the contract was misrepresented. He wouldn't have proceeded had he known about these problems. He accepts there is no written or contractual breach about the exchange of the weeks. But again he wouldn't have bought the property in weeks he couldn't use.

## **my findings**

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

Section 75 of the Consumer Credit Act 1974 allows the consumer, in certain circumstances, to hold their lender liable for any breach of contract or misrepresentation on the part of the supplier of goods or services.

Like the adjudicator I don't think there was a breach of contract by the timeshare company. And I don't consider there was a misrepresentation by the timeshare company which induced Mr M to enter the contract.

There's no dispute that other weeks and locations were available to Mr M. I understand his point that the times and locations didn't suit him. But I don't consider there was a misrepresentation here, which meant Mr M entered the contract. And he now accepts there's no breach of contract on this point.

Mr M's main point is that the contract he signed doesn't comply with local laws in the country where he signed the contract. Had he known this at the time he explains he wouldn't have entered into the contract. So he argues this must have been a misrepresentation – as he wouldn't have signed a defective contract. And he now has doubts he can pass on his title for the timeshare as he intended.

It is possible that there are some laws that apply in the country where Mr M signed the contract. But this is not an issue which gives rise to a section 75 claim for breach of contract or misrepresentation. So I don't consider Barclaycard is liable to him, under section 75.

#### **my final decision**

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

Under the rules of the Financial Ombudsman Service, I am required to ask Mr M to accept or reject my decision before 10 July 2015.

Amanda Maycock  
**ombudsman**