

## **complaint**

Mr G complains about an overseas timeshare contract he and his wife entered into which he says was misrepresented to them and breached. He paid the deposit using his credit card issued by Barclays Bank Plc (trading as Barclaycard) Mr G brings the claim against Barclays under section 75 of the Consumer Credit Act 1974.

Mr and Mrs G have both signed our complaint form, and they've brought the complaint jointly as the timeshare is also jointly owned. But the credit card is in Mr G's sole name. So I'm issuing this decision to him, rather than to Mr and Mrs G.

## **background**

In 2010, while on holiday abroad, Mr and Mrs G bought a timeshare. They paid the deposit on Mr G's credit card with Barclays. Mr G says the timeshare company led them to believe they'd entered a binding contract. So they didn't realise they could cancel within the 14 day cooling off period. And they said the timeshare company breached the European timeshare directive. This was because it took their deposit at the time they signed the contract.

Barclays first said Mr G's section 75 claim couldn't succeed. But it then accepted there was a financial connection between the timeshare company and the business that had taken the deposit. So it could look at the claim under section 75. Barclays paid Mr G £100 for the inconvenience it caused him, and £25 for poor complaint handling. When it looked at Mr G's claim it said the deposit wasn't taken until after the 14 day cooling off period had passed. And this was in line with what was printed on the credit card receipt. So it didn't accept his claim.

Mr G asked us to look at the complaint. Our adjudicator didn't uphold it, as he couldn't see there had been a misrepresentation or breach of contract. The cooling off period was set out in the contract. The deposit wasn't taken until after that period ran out.

Mr G asked for a review. He said there had been a misrepresentation. He and Mrs G thought the contract was binding there and then. They had been pressurised into buying the timeshare. They were on holiday at the time and passed the cooling off period. Every day the company bombarded them, telling them they were bound by what they'd signed. They said they wanted to retract the signing. But they were told they could only do this in the UK.

## **my findings**

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

I can only uphold Mr G's claim under section 75 if I find there has been a breach of contract or misrepresentation by the timeshare company.

Mr G is concerned the timeshare company took his credit card details on the day he and Mrs G signed the contract. But the timeshare company didn't take the deposit until after the 14 day cooling off period had passed. And the contract made it clear that they had a 14 day cooling off period.

Mr G says that taking his credit card details on the day he and Mrs G signed the contract is a breach of the European timeshare directive. But a breach of this directive doesn't mean

there's a breach of contract. And he and Mrs G haven't suggested there was any other breach – for example, that they didn't get the timeshare they'd paid for. So I don't think there was a breach of contract here.

For Mr G's claim of a misrepresentation to succeed, he needs to show that the timeshare company misrepresented something to him and this meant he and Mrs G entered into the contract. This is called being 'induced' into the contract by a misrepresentation.

Mr G hasn't said that there was a misrepresentation which meant he and Mrs G entered into the contract. Rather, he says that after they'd signed it they were led to believe it was a binding contract. I don't think this was strictly wrong – it was legally binding, as set out in section 14 of the contract. But they have recently said they were told they could only cancel it in the UK.

I appreciate that Mr and Mrs G might have felt some pressure to sign the contract, while on holiday. But the contract they signed said there was a cooling off period. And that they'd received the notice under section 2 of the Timeshare Act 1992 (which explains they can cancel by giving notice to the timeshare company). The credit card receipt says the money wouldn't be taken until after the cooling off period passed. Having considered all the evidence I don't consider there was a misrepresentation. So I can't fairly say Barclays must refund Mr G the money he and Mrs G paid for the timeshare.

#### **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 G to accept or reject my decision before 10 July 2015.

Amanda Maycock  
**ombudsman**