

The complaint

Mr D says that Lloyds Bank PLC, who I'll call "Lloyds", were unfair to reject his complaint about the sale of timeshares he financed through them.

Mr D entered into the timeshare agreements with his wife, but as the credit card was in his sole name, I will refer only to Mr D in this decision.

What happened

I issued my provisional decision on this complaint in August of this year. An extract from that provisional decision is set out below.

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

I know it will disappoint Mr D, but I don't think Lloyds need to take any action here.

Our investigator thought Mr D's claim about the timeshare he entered into in June 2014 had been made out of time and I agree for the reasons I'll set out in a moment. But our investigator didn't consider the claim Mr D had made about his timeshare purchase in July 2015 and I note Lloyds had considered that. I'm therefore issuing a provisional decision so I can provide my views on Mr D's claims regarding both purchases, and so the parties have an opportunity to consider, and respond.

I'm required by DISP 3.6.4R of the Financial Conduct Authority's (FCA's) Handbook to take into account the relevant, laws and regulations; regulators rules, guidance, and standards; codes of practice and, when appropriate, what I consider to have been good industry practice at the relevant time.

The Financial Ombudsman Service is designed to be a quick and informal alternative to the courts under the Financial Services and Markets Act (2000). Given that, my role as an ombudsman is not to address every single point that has been made. Instead, it is to decide what is fair and reasonable given the circumstances of this complaint. And for that reason, I am only going to refer to what I think are the most salient points. But I have read all of the submissions from both sides in full and I keep in mind all of the points that have been made when I set out my final decision.

The Limitation Act 1980 and the Consumer Credit Act 1974

When something goes wrong and the payment was made with a credit card, as was the case here, it might be possible to make a section 75 claim. This section of the Consumer Credit Act (1974) says that in certain circumstances, the borrower under a credit agreement has the same right to make a claim against the credit provider as against the supplier if there's either a breach of contract or misrepresentation by the supplier.

From what I can see, all the necessary criteria for a claim to be made under section 75 have been met.

A claim under section 75 for misrepresentation or breach of contract against Lloyds had to be made within six years of when Mr D had everything he needed to make such a claim. And with regard to the first timeshare purchase, I think that was when he purchased it in June 2014. After all, he says that he entered into the agreement to purchase the timeshare because of misrepresentations. And as the upshot of the claim was that he would not have made the purchase but for the misrepresentations at the Time of Sale, it was at that time that he suffered a loss because he ended up borrowing money from Lloyds. So, Mr D had until June 2020 to raise a section 75 claim with Lloyds. As he didn't do so until September 2020 I think it's likely a court would consider his section 75 claim for the first agreement to be time barred.

I don't think it likely they would accept Mr D's suggestion he didn't have all he needed to make his claim until later than that. I say that because although Mr D has suggested it was only much later that he realised he couldn't make the bookings he wished to, he hasn't provided any evidence in support of that, and I note that he was able to at least book the holiday to F, as that was when he signed up for the second agreement. I think the fact the section 75 claim for the first agreement is likely to be time barred would give Lloyds a complete defence to that claim.

The July 2015 purchase and the claim under the CCA

I don't agree that the July 2015 agreement was simply an extension of the June 2014 agreement. It was with G and not V, and it was subject to a new purchase agreement to cover accommodation for a longer period, and at a different hotel.

I think Mr D's claim under the CCA was made in time in respect of that agreement.

I'll therefore consider the merits of the complaint points Mr D raised with Lloyds in respect of the July 2015 agreement.

Section 75

Misrepresentation is, in very broad terms, a statement of law or of fact, made by one party to a contract to the other, which is untrue, and which materially influenced the other party to enter into the contract.

Mr D says the second agreement was in effect misrepresented to him because he was provided with false statements of fact. He says he was told he could book holidays but found he couldn't, and he says he was told he would be able to sell his timeshare but couldn't. The standard information form explained that Mr D may "freely dispose of his right, free of charge" but I can't see from the information provided that a promise was made that Mr D could sell his timeshare rights. I don't therefore think a court would think the agreement had been misrepresented on those grounds.

Neither have I seen any evidence to support Mr D's assertion that the accommodation promised at A, or through the associated exchange scheme, wasn't available to him, I don't think a court would think there was evidence of that either, and I don't therefore think Lloyds were unreasonable to reject Mr D's section 75 claim regarding the second agreement.

Section 56 and section 140A of the CCA

Under section 140A and section 140B of the CCA a court has the power to consider whether a credit agreement creates an unfair relationship and, if it does, to make appropriate orders in respect of it. Those orders can include imposing different terms on the parties and

refunding payments. In deciding whether to make an order, a court can have regard to any connected agreement; in this case, that could include the agreement for the sale of the timeshare product in 2015.

Section 56 of the CCA is also relevant in the context of section 140A of the CCA, as the pre-contractual acts or omissions of the supplier will be deemed to be the responsibility of the lender (Lloyds), and this may be taken into account by a court in deciding whether an unfair relationship exists between Mr D and Lloyds.

Mr D says he was pressured into agreeing the deal and that aggressive sales tactics were employed. I think that's best dealt with as a claim under section 140A.

We know it is common that these sales presentations often lasted for a number of hours. I've therefore considered whether there is evidence that Mr D's ability to exercise choice was significantly impaired by the lengthy presentation, the pressure, lack of breaks, and the alcohol he says they were encouraged to drink, as that may have created an unfair relationship between them and the supplier.

Mr D had already attended a presentation in 2014, so I think he would have been likely to have had an understanding of the approach that would be taken. It's clear that despite that earlier presentation he was still prepared to go ahead with the 2015 purchase. I don't think I've been provided with sufficient information to suggest Mr D didn't understand he didn't have to say yes to the agreement or that he didn't understand he could walk away without entering into it.

The purchase agreement explained that Mr D had "the right to withdraw from this contract within fourteen calendar days with no need for any justification." I think that if he had therefore felt he'd been pressured into the purchase he had time to reflect and withdraw. I don't think a court would therefore be likely to conclude that any pressure applied created an unfair relationship.

It's for those reasons that I don't think Lloyds' decision to reject Mr D's claims was unreasonable.

My provisional decision

For the reasons I've given above I'm not expecting to uphold this complaint.

Further comments and/or evidence

Lloyds agreed with my provisional decision and Mr D didn't provide any further information.

What I've decided – and why

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

As I've not been provided with any further information, I've not been persuaded to change my provisional decision. That provisional decision now becomes my final decision on this complaint.

My final decision

For the reasons I've given above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 7 December 2023.

Phillip McMahon
Ombudsman