DRN-4149609

The complaint

Mr H complains that HSBC UK Bank Plc ("HSBC") rejected his claim under s. 75 Consumer Credit Act 1974 ("CCA") in respect of a holiday product which was mispresented. He also said that the seller had breached its contract with him. The purchase was made by Mr H and his wife, but as the payment was made from Mr H's credit card he is the eligible complainant. For simplicity, in this decision I will refer to him as the purchaser.

What happened

In January 2022 Mr H was told he had won a voucher worth £500 subject to him attending a presentation. During the course of this he was shown hotel accommodation which he says he was told would be the standard he could expect. He entered into an agreement with a company I will call D under which he paid £3,032.35 for four weeks accommodation in a one bedroom apartment subject to certain terms and conditions. He paid this using his HSBC credit card. The payment was made to a company I will call MT. In the agreement its states: "*the company [MT is] authorized to receive these payments, with the tax identification number [xxx], is authorized to do so by [D]. On the basis of a cooperation agreement*".

Mr H and his wife took a two week holiday with D in September 2022. Mr H says the accommodation was not as good as he had been led to believe. He made a claim under s.75 which HSBC rejected. It said that the required debtor-creditor-supplier ("DCS") agreement was not in place as the payment had been taken by MT. It also said that Mr H had not provided any evidence that the product had been misrepresented.

Mr H brought a complaint to this service where it was considered by one of our investigators who didn't recommend it be upheld. She said it was possible that there was DCS agreement in place, but she didn't consider she needed to reach a conclusion as she was not minded to recommend the complaint be upheld. She didn't consider there was sufficient evidence of misrepresentation and no details of any breach of contract had been provided.

Mr H didn't agree and said the apartment he had been given was not the same as the one he had viewed at the time of sale. Furthermore, he hadn't been able to upgrade. He also said there was a DCS agreement in place. He added that the booking he had made referred to it being 'fly buy' which he said meant he had to attend a sales presentation. This was not something he had agreed to in the contract. He had not been sold holiday weeks, but opportunities for D to sell him a timeshare. He also said that he had been pressurised into making the purchase.

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.

I appreciate that Mr H is unhappy with the purchase he has made, but I do not consider I can uphold his complaint. I will explain why.

S. 75 of the CCA states that, when a debtor (Mr H) under a DCS agreement has a claim of

misrepresentation or breach of contract against the supplier that relates to a transaction financed by the agreement, the creditor (HSBC) is equally and concurrently liable for that claim – enabling the debtor to make a 'like claim' against the creditor should they choose to.

In this case it has been disputed as to whether the required agreement is in place as HSBC has suggested the payment was made to another company. It seems to me, more likely than not, that the company receiving the payment and D are connected and that means s. 75 has effect, but I make no finding on that point since it is not material to my decision.

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 H has said he was led to believe the accommodation he had acquired for the four weeks was of a higher standard than he received when he took his initial holiday. The difficulty is establishing what standard had been agreed and what he actually had use of in that first trip.

The agreement states: "*The customer hereby acquires the right to book and use tourist accommodation that the provider offers in certain holiday resorts. Booking must be made within 11 months after signing this contract. The purchaser can change booking details without incurring any costs for accommodation and appointment up to 12 weeks before the use by contacting the provider*". There is nothing that in that or any other wording in the contract about the standard of accommodation. It simply states that the first holiday must be taken at a specified hotel and the further trips at certain other resorts. It adds that "All bookings are subject to availability".

Mr H relies on what he says he was told and what he was shown at the time of purchase. The difficulty I have is that the documentation does not support his claim. I was not present at the point of sale so I cannot say what was said and what promises, if any, were made to Mr H. I do not think it likely that Mr H was guaranteed use of accommodation identical to that he was shown. It may have been implied, that does not amount to misrepresentation.

Nor am I convinced that he is obliged to attend any future presentation. He says that the reference to 'fly buy' on his initial booking means he as obliged to attend a presentation. I am not persuaded that he has signed anything which obliges him to attend any such event. He may have been invited to do so, but the inclusion of the words 'fly buy' does not clearly demonstrate attendance at a presentation is mandatory and I cannot say that the product was misrepresented in this regard.

However, even if he was required to attend a presentation I am not convinced that this would amount to misrepresentation. If there was failure to mention this I do not consider it amounts to a material influence on Mr H. A presentation would not form a significant part of a 14 day holiday and so I cannot say that D did not sell him access to holiday accommodation. I have noted that when Mr H wrote to D during his first holiday he made no mention of the requirement to attend a presentation which I think he would have done if it had been an issue for him.

In conclusion I cannot safely conclude that HSBC was wrong to reject Mr H's claim.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 30 August 2023.

Ivor Graham
Ombudsman