DRN-4248910

The complaint

Mr N complains that he was mis-sold a timeshare product. Because he paid part of the purchase price using his Halifax credit card (issued by Bank of Scotland plc), he says that it is responsible along with the seller.

What happened

Mr N has explained that he and his wife were on honeymoon in Mexico in 2014. They were invited to a reception meeting, which they were told would last about an hour. In fact, it lasted several hours, at the end of which they agreed to pay US$12,700 for 20,000 "Options". They were told that the Options could be exchanged for holiday accommodation at the resort every other year; they could also use them at other resorts with which the resort had arrangements.

Most of the purchase price was paid with the help of a loan, but Mr N paid a deposit of US$1,905 with his Halifax credit card.

In early 2019 Mr N complained to the resort. He said that it was difficult to book accommodation and that identical accommodation was available online at lower prices than he was able to secure using his Options. The resort did not accept what Mr N said, and it suggested different ways of using his Options. It also provided what it thought was evidence that bookings could be made more cheaply than those available to the general public. Mr N thought however that, in the circumstances, his Options had no real value. He asked to return them and for his money back. The resort declined.

In January 2020 Mr N contacted Halifax. He said that, under section 56 and section 75 of the Consumer Credit Act 1974, it was responsible for the actions of the seller. Halifax noted however that Mr N's contract with the seller included provisions which meant he could not bring a claim for misrepresentation. It did not think the seller was in breach of contract.

Mr N referred the matter to this service through a claims management business, which I'll call "S". In summary, he said:

- He entered into the contract for the purchase of Options as a result of misrepresentations on the part of the seller. As a result, he has a claim against Halifax in the same way as against the seller.
- Section 56 of the Consumer Credit Act makes Halifax responsible for statements made by the seller in connection with the sale.
- The actions of the seller and the nature of the sale contract mean that the credit card agreement creates an unfair relationship between him and Halifax.

Mr N seeks a refund from Halifax of money paid under the sale contract – not limited to that which he paid using his credit card.

One of our investigators considered what had happened but was not persuaded to uphold the complaint. S did not accept the investigator's assessment and asked that an ombudsman review the case.

I did that and issued a provisional decision, in which I said:

Under section 56 of the Consumer Credit Act 1974 statements made by a supplier in relation to a transaction financed or proposed to be financed by a "debtor-creditor-supplier" agreement are deemed as being conducted by the supplier as agent for the creditor.

In addition, one effect of section 75(1) of the Act is that a customer who has a claim for breach of contract or misrepresentation against a supplier can, subject to certain conditions, bring that claim against a lender. Those conditions includes :

- *that the lending financed the contract giving rise to the claim; and*
- *that the lending was provided under pre-existing arrangements or in contemplation of future arrangements between the lender and the supplier.*

The supplier in this case was Sol Meliá VC Mexico SA de CV, a Mexican company. Mr N's credit card statement shows a payment on 11 May 2014 of US$2,540 to "Resorts ADV Sol Melia", which I take to be a reference to a payment to the same company in respect of the timeshare. I am satisfied therefore that there was a debtor-creditor-supplier arrangement in this case and that sections 56 and 75 of the Consumer Credit Act could apply in this case.

I have therefore considered what Mr N has said about the sale contract and the statements which led him to enter into it.

However, I do not believe that the timeshare contract in this case was governed by English law. It was executed in Mexico, and the seller was a Mexican company. In addition:

- *The ninth clause of the timeshare contract includes a reference to article 70 of the Federal Consumer Protection Law, a Mexican statute.*
- *The fifteenth clause deals with competency and jurisdiction and says that any dispute should be referred to the Federal Consumer Protection Bureau, a Mexican organisation.*

Sections 56 and 75 of the Consumer Credit Act can apply to overseas contracts – including those which are subject to a law other than English law. But, in considering whether Mr N might have an underlying claim against the seller, I must have in mind that Mexican law may be different from English law. I have not been provided with any evidence of Mexican law, but it is open to the parties to make further submissions on it if they wish to do so.

I do note however that Mr N signed an acknowledgment that there had been "… no oral or written representations other than those contained in the vacation purchase agreement and network services agreement…"

I think the paperwork also made clear that additional charges could apply at resorts and that bookings were made on a first-come first-served basis. If chosen accommodation was not available, the resort said it would seek to find suitable alternatives, and the evidence I have seen indicates that it did that.

In the circumstances, I do not believe that there is sufficient evidence that Mr N has a claim against the seller which could in turn give rise to a claim against Halifax.

Under section 140A and section 140B of the Consumer Credit Act 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 orders under these provisions, a court can consider any linked agreement – which in this case would include the timeshare contract. Again, I do not understand the fact that a linked agreement is subject to overseas law to be a bar to claims under section 140A and section 140B. The provisions of the applicable law must however be a relevant consideration.

For the reasons I have explained, I think it unlikely that a court would make an order under section 140B on the basis of misrepresentation or breach of contract.

But S seeks to rely on other matters in support of its claim that the timeshare contract makes the credit card agreement unfair. Specifically, it says:

- *The type of contract which Mr N signed has been declared unlawful (and unenforceable) as a matter of Spanish law.*
- *The contract does not comply with relevant timeshare law. It mentions European Directive 94/47/EC, but the Directive that applied in the EU at the time was 2008/122/EC.*
- *Some of its terms are "unfair" within the meaning of the Unfair Terms in Consumer Contracts Regulations 1999.*

For the reasons I have explained, however, I believe the timeshare contract is governed by the laws of Mexico. The regulatory breaches which S has alleged all arise (if at all) under European legislation, which member states have incorporated into national law. For obvious reasons, neither European law nor the national laws of member states have any application to contracts governed by the laws of Mexico. And I have been provided with no evidence of any breach of any timeshare laws or regulations which applied in Mexico at the time.

There has been no suggestion that the terms of Mr N's credit card agreement with Halifax were or are inherently unfair. It is significant too, in my view, that he did not open the credit card account as a result of anything done or said at the time he bought the timeshare. He already had the credit card and used it (both before and since) to make other purchases. In the circumstances, I do not believe that I can safely conclude that the actions of the seller made unfair an agreement which Mr N already had with Halifax. This is not a case where, but for the timeshare agreement, there would be no credit agreement.

Halifax and S both said that they had nothing to add in response to my provisional decision.

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.

Given that neither party has provided any further evidence or arguments in response to my provisional decision, I do not believe there is any reason for me to change my view. In saying that, I stress that I have reviewed the case in full before issuing this final decision.

My final decision

For these reasons, my final decision is that I do not uphold Mr N's complaint and do not require Bank of Scotland plc to do anything more to resolve it.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr N to accept or reject my decision before 22 August 2023.
Mike Ingram
Ombudsman