

## **The complaint**

Mr D complains that he was mis-sold a timeshare product when he was on holiday in Florida. Because he used his Halifax credit card, issued by Bank of Scotland plc, to pay part of the purchase price, he says that he has a claim against it in the same way as he has a claim against the seller.

Mr M is represented by a claims management business, so when I refer to Mr D's submissions, I include those made on his behalf.

## **What happened**

In July 2014 Mr D and his wife were in Florida. While they were there they entered into an agreement with SVO Vistana Village Inc., a Florida company, for the purchase of vacation ownership interests ("VOIs"), a form of timeshare. The purchase documents recorded that Mr and Mrs D were existing owners and that the purchase was an upgrade.

The agreement also recorded that Mr and Mrs D were buying floating interests in four accommodation units for a total price of US\$42,675. They were to pay a deposit of US\$14,426.48, followed by 120 monthly payments of US\$418.03. Mr D's credit card statements indicate that he paid US\$1,748 on 23 July 2014, and that he used the same card to make monthly payments thereafter.

The agreement gave Mr and Mrs D ten days in which to cancel the contract. It also said that it was governed by Florida law.

In March 2020 Mr D contacted Halifax to say he had a claim against it under section 75 of the Consumer Credit Act 1974 ("section 75"). He said that he had been unable to book accommodation and that the VOIs had been misrepresented to him.

Mr D's initial claim had been directed to the wrong part of the Lloyds Banking Group (of which Halifax is a part), but, when the correct area received it, Halifax declined the claim. It said that there was insufficient information or evidence to support it. It invited Mr D to provide further evidence to show what had happened.

Mr D referred the matter to this service, where one of our investigators considered what had happened. She did not however recommend that the complaint be upheld. Like the Bank, she did not think there was sufficient evidence to support Mr D's claims. Mr D did not accept the investigator's opinion and asked that an ombudsman review the case. He said that, in addition to his complaint about the bank's response to his section 75 claim, the circumstances of the sale were such that the credit card agreement created an unfair relationship.

## **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.

## Section 75

Section 75(1) says:

*If the debtor under a debtor-creditor-supplier agreement falling within section 12(b) or (c) has, in relation to a transaction financed by the agreement, any claim against the supplier in respect of a misrepresentation or breach of contract, he shall have a like claim against the creditor, who, with the supplier, shall accordingly be jointly and severally liable to the debtor.*

Section 12(b) of the same Act says:

*A debtor-creditor-supplier agreement is a regulated consumer credit agreement being —*

*...*

*(b) a restricted-use credit agreement which falls within section 11(1)(b) and is made by the creditor under pre-existing arrangements, or in contemplation of future arrangements, between himself and the supplier ...*

And section 11 includes:

*(1) A restricted-use credit agreement is a regulated consumer credit agreement—*

*...*

*(b) to finance a transaction between the debtor and a person (the “supplier”) other than the creditor ...*

The card payments in this case were made to the seller, SVO Vistana Village Inc. They were, therefore, made under pre-existing arrangements between that company and Halifax (albeit indirectly, through Mastercard).

Section 75(3) includes financial limits on section 75 claims. It says that subsection (1) does not apply “... so far as the claim relates to any single item to which the supplier has attached a cash price ... [of] more than £30,000 ...” The cash price in this case was US\$42,675. At current exchange rates that is around £34,000, but at the rates prevailing in July 2014 it was rather less – around £26,000.

I am satisfied that section 75 could apply and that I need to consider what Mr D has said about the sale and subsequent events.

### **Misrepresentation**

As a matter of English law, a 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 induces the other party into the contract.

The sale contract included, at clause 18, a term which said it was subject to Florida law. I have seen no evidence to show whether local law recognises claims in misrepresentation in the same way that English law does, but I have considered this part of the complaint on the assumption that there are no material differences.

Mr D says that he been unable to book holiday accommodation, contrary to what he was told at the time of sale. He says that he therefore has a claim in misrepresentation against the seller. He has however provided no evidence in support of that allegation. He has not, for example, provided information or evidence about any use he has had of his VOIs or about any attempts (successful or unsuccessful) he has made to book accommodation.

I note too that clause 10 of the sale contract was an “entire agreement” clause; if valid, the

effect of that provision is that Mr D cannot rely on anything said to him about the contract unless it was included in the written agreement.

Be that as it may, the evidence which Mr D has provided lacks any detail and is unsupported. In the circumstances, I think the bank's response to this part of his claim was reasonable.

### ***Breach of contract***

Mr D's allegations about the availability of accommodation could also form the basis of a claim for breach of contract. He is, in effect, saying that the seller has not provided what it agreed to provide.

My view of such a claim is however very similar to my view of a claim in misrepresentation. There is in my view simply not enough evidence to support such a claim.

### ***Section 140A claims***

In reply to the investigator's initial view, Mr D added that he thought the credit card agreement created an unfair relationship under section 140A of the Consumer Credit Act. Section 140A says:

*(1) The court may make an order under section 140B in connection with a credit agreement if it determines that the relationship between the creditor and the debtor arising out of the agreement (or the agreement taken with any related agreement) is unfair to the debtor because of one or more of the following—*

*(a) any of the terms of the agreement or of any related agreement;*

*(b) the way in which the creditor has exercised or enforced any of his rights under the agreement or any related agreement;*

*(c) any other thing done (or not done) by, or on behalf of, the creditor (either before or after the making of the agreement or any related agreement)*

...

The reference to "any related agreement" is explained at section 19:

*(1) A transaction entered into by the debtor or hirer, or a relative of his, with any other person ("the other party"), except one for the provision of security, is a linked transaction in relation to an actual or prospective regulated agreement (the "principal agreement") of which it does not form part if—*

...

*(b) the principal agreement is a debtor-creditor-supplier agreement and the transaction is financed, or to be financed, by the principal agreement*

...

The effect of this is that, in considering whether the credit card agreement creates an unfair relationship, a court can take into account the timeshare contract. If a court decides that a credit agreement creates an unfair relationship, it can make a wide range of orders under section 140B – including orders requiring the creditor payments, change the terms of the agreement and write off debt.

Only a court can make orders under section 140A and 140B of the Consumer Credit Act. I have no power to do so, although I can make a wide range of awards, and could, if I thought

it fair and reasonable to do so, require a lender to, for example, refund loan payments or write off a loan. I do not believe however that I should do so here.

As I have indicated, I am not persuaded that Mr D was treated unfairly by the seller in this case. There is simply not enough evidence to allow me properly to reach that conclusion.

I would note as well that, whilst the credit card agreement and the sale agreement are linked transactions within the meaning of section 19, they were taken out entirely separately at different times. Mr D had the credit card before he bought the VOIs, and he could have bought the VOIs without using the card. So, even if I thought Mr D had been treated unfairly by the seller, it does not follow that I would make an award in his favour.

### ***Conclusion***

It is not for me to say whether Mr D has a valid claim under section 75 or under section 140A of the Consumer Credit Act. Those are however relevant pieces of legislation which I must take into account in deciding what's fair and reasonable in the circumstances of his complaint. Having done that, I am satisfied that Halifax's response to his claims was fair.

### **My final decision**

For these reasons, my final decision is that I do not uphold Mr D'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 D to accept or reject my decision before 16 November 2023.

Mike Ingram  
**Ombudsman**