

The complaint

Mr O has complained that Lloyds Bank PLC (“Lloyds”) has unfairly turned down his claim made under the Consumer Credit Act 1974 (“CCA”).

What happened

On 12 August 2016, when on holiday overseas, Mr O took out a timeshare from a business I’ll call “Business C”. Under the agreement, Mr O was entitled to a week of holiday every year in a sea-view apartment in the “medium” holiday period. The total contract price was £6,900 and the initial management charge was £415 per year.

Mr O paid £200 towards this using his Lloyds credit card, with the payment being made on 26 August 2016. On 25 August a payment of £6,500 was made by bank transfer.

In June 2019, Mr O, using a professional representative (“PR”), made a claim to Lloyds under the CCA. In short, PR said that Lloyds was jointly responsible for misrepresentations made by Business C to Mr O that led to him taking out the timeshare. PR asked for payment of £6,900 plus interest.

Lloyds responded to say it wasn’t going to consider the claim until it saw evidence that Mr O paid the full price of £6,900 that was being claimed, as the evidence provided only showed payments of £6,700.¹ Unhappy with Lloyds’ position, Mr O complained that the claim hadn’t been properly assessed.

One of our adjudicators considered the complaint, but didn’t think Lloyds needed to do anything further. They considered possible claims under both s.75 CCA and s.140A CCA, but didn’t think there was enough to say Business C had misrepresented the nature of the timeshare to Mr O or that there was an unfair debtor-creditor relationship due to the timeshare purchase.

Mr O didn’t agree with our adjudicator, so the matter was passed to me for a decision.

My provisional decision

Having considered everything, I agreed with the outcome that our adjudicator reached, but for different reasons. So, I issued a provisional decision, setting why I thought that and invited both parties to comment.

I explained that I didn’t have any evidence from Business C, and the only evidence there is from the time of sale is from Mr O. He provided all of the documentation he had from the time of sale, along with his memories. So, when considering this claim, that was the only evidence available. I was mindful that his memories may not be an accurate representation of the precise sales process as memories are imperfect. So I had had to weigh all of that up when deciding what I thought most likely happened. I didn’t think it was unfair to Lloyds for me to do this – ultimately I have to decide the complaint in front of me based on the

¹ Mr O has recently provided a letter to show that the total cost was actually reduced to £6,700 if payment was made before the end of August 2016.

evidence available.

What claim was made?

I considered and set out what the claim was that was made to Lloyds and then, in turn, what complaint was referred to our service.

The letter sent by PR to Lloyds was headed “*RE: S.75 AND/OR S.140A Consumer Credit Act 1974*”, but went on to say:

“Our clients wish to make a claim pursuant to s.75 of the [CCA], to recover the monies they have paid to you.”

PR then set out details of alleged misrepresentation made. Lloyds didn’t respond to the substance of that claim, and so a complaint was referred to our service that the claim was not properly handled. And on the form used to refer the compliant, PR wrote:

“Complaint about a section 75 claim about a timeshare”

I thought it was plain that the claim made was a s.75 CCA claim about alleged misrepresentations.

While Section 140A may be a relevant consideration, and I appreciated that our adjudicator went on to consider whether a court might conclude that the relationship between Mr O and Lloyds was unfair, I couldn’t see that Mr O (through PR) had ever asked Lloyds to consider this point or provided evidence or arguments to support it, or that Lloyds had a chance to investigate it. So, in the circumstances, I thought it would be better dealt with as a separate complaint, should Mrs O wish to make one to Lloyds.

Mr O said he was told a number of things about the timeshare by Business C that turned out not to be true, and these amounted to actionable misrepresentations. S.75 CCA states that in certain circumstances, when a debtor has a claim against a supplier in respect of a misrepresentation or breach of contract, they will have a like claim against the creditor. Here, Mr O (the debtor) was asking Lloyds (the creditor) to answer his claims for misrepresentation.

PR, on Mr O’s behalf, set out a number of possible misrepresentations when it first made the claim. In response to our adjudicator’s view, Mr O provided further clarification about what he said happened. Taking these together, I thought the alleged misrepresentations were:

- That Mr O could have holidayed whenever he wanted and the timeshare could be exchanged to stay anywhere in the world. Mr O thought he’d be able to use the timeshare in August or April.
- The timeshare would save money in the long-term, but the maintenance fees went up 10% after one year of ownership.
- It wasn’t explained that Mr O would have to pay an extra £3,900 to take holidays when he actually wanted them.
- The accommodation provided wasn’t as good as what had been shown to Mr O at the time of sale.
- Mr O wasn’t able to sell the timeshare back to Business C despite them being told there would be no problems doing so at the time of sale.

Mr O also said that he was made to pay a non-refundable deposit the day he signed up to the timeshare, but he didn’t think he should have paid anything until the end of the cooling off period. Further, the cooling off period should have started when he returned from his

holiday, but it started from the day he signed the paperwork.

The evidence

I considered the documents available alongside Mr O's memories of the sale and set out a summary of the evidence. I noted that Mr O explained that he was on holiday with his family when they were approached and asked to visit a hotel in exchange for free tickets to a tourist attraction. When at the hotel, they were taken to a sales presentation for a timeshare. Mr O said the focus of the presentation was on the fact the timeshare could be exchanged for "any other apartment/holiday let around the world" using an exchange programme. Mr O says that he was told he would make savings by signing up to the timeshare and that it was easy to cancel later if he didn't want it.

Mr O said that he explained to Business C that his family could only holiday during the school Easter or summer holidays and that the sales representative understood this and didn't say they wouldn't be able to use the timeshare during that time – in fact Mr O said he later found out he needed to pay a further £3,900 to stay in the summer holidays.

Mr O said that he had to pay a deposit there and then, and the sales representative wouldn't let him think about it and come back another time. Mr O paid the deposit and then, after the holiday had ended, transferred the balance. He said that it wasn't until the following year that he found out his timeshare couldn't be used in the summer holidays. Mr O provided an extract of an email from the timeshare provider on this point, that reads:

"The Medium season as per calendar provided covers in Malta (as seasons differ in different countries) January to mid April and November to mid December. (approx) as dates vary slightly yearly.

Should you need to own the period that covers school holidays which is Peak High, the upgrade cost difference is GBP 1200 for Inland view or GBP 3900 for Seaview."

I also had sight of the contract Mr O signed as well as some other documents from the time of sale.

My provisional findings

Having considered everything, I said that I didn't have enough to say Business C misrepresented the nature of the timeshare to him in the way alleged. With regard to the first allegation that the timeshare could be used during school holidays and around the world, I hadn't seen any specific allegations of what the actual representations made were. Mr O said that the term 'medium' wasn't explained to him at the time of sale, despite repeatedly asking for confirmation that the timeshare could be used during school holidays. He also noted that the paperwork is silent as to when the timeshare could be used. I thought that was different to saying there was a factual representation by the supplier that wasn't true – for example, Mr O hadn't said he was told he would be able to use the timeshare in the summer school holidays. For the same reasons, I couldn't say that there was a misrepresentation made because Mr O wasn't told he'd have to pay more to use the timeshare apartment in the summer holidays.

Mr O pointed to an email that states the timeshare could have been used up to mid-April, so I thought that coincides with his understanding that the timeshare could have been used in the Easter school holidays. I also noted that there was an exchange programme, so it was possible Mr O could have found other holidays at other times of the year, albeit that there might not have been the availability of holidays Mr O actually wanted at any given time. So, without more specific details of what was discussed at the time of sale, I couldn't say Mr O

was misled about when he could use the timeshare.

Mr O said that he was told he could find “any other apartment/holiday let around the world” using the exchange programme. I didn’t think this statement was sufficiently clear as to create an actionable representation as I wasn’t sure what Mr O was told about what holidays were available. I also found this statement inherently unlikely as the exchange programme could only have offered apartments that had been put up for exchange and plainly could not guarantee any holiday Mr O wanted anywhere in the world at any time. So, I wasn’t able to say Mr O was misled about what holidays he was able to take.

Mr O said that he was aware at the time of sale that the annual maintenance fees could rise, but he was concerned with the level of the increase – around 10% in the first year. He thought this increase was unreasonable and would be unaffordable if continued over a ten year period. Mr O hadn’t said there was a misrepresentation made about this and he was aware the costs could go up. So, I couldn’t see that could lead to a successful claim under s.75 CCA.

Mr O said he was told he would save money by taking out the timeshare, but I didn’t really know what statement of fact this related to. It wasn’t clear to me against what measure this was made, for example, saving money compared to staying in a similar hotel in the same area or something different? So I thought that allegation, in and of itself, couldn’t amount to a misrepresentation.

PR also raised two issues – that the timeshare accommodation wasn’t as good as that originally shown at the time of sale and that Mr O couldn’t resell the timeshare back to Business C. These two allegations weren’t repeated in Mr O’s evidence and I’d not been shown any evidence of the quality of the accommodation or that Mr O ever tried to resell the timeshare. It followed, I didn’t think there is enough to substantiate these claims.

Finally, Mr O talked about having to pay a deposit during the 14-day cooling off period and he has questioned when that period should have started. I didn’t think this was a misrepresentation, nor could I see taking a payment could have been a breach of contract. I noted that, although he authorised Business C to take payment at the time of sale, it wasn’t actually taken until 14 days later. So in any event, I didn’t think payment was taken during the cooling off period as alleged. And I wasn’t sure why Mr O said the cooling off period should have started at a later date, but I didn’t think it would have made a difference as Mr O was initially happy with the sale and wasn’t unhappy until the following year. So I thought he would have paid for it in the same way even if the cooling off period had started later. So I couldn’t see that any of these concerns amounted to something for which Lloyds could be responsible under s.75 CCA.

Responses to my provisional decision

Lloyds responded to say it agreed with what I’d said.

Mr O responded to say he didn’t agree with my provisional decision. He explained that the timeshare was bought in good faith and it was a surprise to find out later there was a further charge to use it in the way he expected. Mr O clarified some of the sales process. He explained that due to his and his wife’s jobs, they told the salesperson they would use the timeshare in August or possibly Easter. But they weren’t told that there was an extra charge of £3,900 to holiday in the summer, that wasn’t documented in the sales literature and the salesperson wasn’t transparent about this. Mr O explained that they would still have to pay the extra cost if they wanted to exchange their timeshare to stay somewhere else.

PR responded to say it had nothing further to add.

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.

When evidence is incomplete, inconclusive, incongruent or contradictory, I've made my decision on the balance of probabilities – which, in other words, means I've based it on what I think is most likely to have happened given the available evidence and the wider circumstances.

Having considered everything again, I've not altered my provisional findings. I know this will come as a disappointment to Mr O, so I'll explain why.

I do understand Mr O's understandable frustration about the situation, but under the s.75 CCA claim made, Lloyds are only responsible if Business C breached its agreement or misrepresented things at the time of sale. Having considered everything, I don't think there was a misrepresentation that Mr O could use the timeshare he bought in August. Misrepresentation is a legal claim and silence on the part of the salesperson doesn't normally amount to a misrepresentation, even if morally they could or should have said something. And I don't think the relationship between Mr O and the salesperson meant that non-disclosure could amount to an action that Lloyds could be responsible to answer.

Mr O has asked whether it is acceptable for Business C to sell products in this way or without being fully transparent. Whilst I understand why he asks this, it's not something I am able to answer. My role isn't to regulate or **oversee** the sales of products bought with credit, rather **it's** to consider whether the business lending the money might have a complaint to answer arising out of the sale. And, for the reasons set out above, I don't think Lloyds is responsible for what might have gone wrong under the relevant legal provision.

My final decision

I don't uphold Mr O's complaint against Lloyds Bank PLC.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O to accept or reject my decision before 8 August 2023.

Mark Hutchings
Ombudsman