

The complaint

Mrs S complains Lloyds Bank PLC hasn't treated her fairly in relation to a dispute over a purchase she made on her credit card. Mrs S has been represented throughout her complaint by a claims management company.

What happened

Mrs S had a membership of a holiday club which I'll refer to as "CI". In October 2018 CI issued an invoice to her for £8,341.24, made up of fees relating to the club from that year, and arrears from previous years.

On 1 February 2019 Mrs S signed a contract with a company I'll call "SPS". The contract was split into two parts – one part was for a "consultation and investigation" service, while under the second part SPS would arrange for her holiday club membership to be terminated or "relinquished", by 1 February 2020. If SPS was unable to complete this service on time, it promised to refund all the money Mrs S had paid for the second part of the contract only. The amounts invoiced for parts one and two of contract were £1,422 and £3,318 respectively. Mrs S used her Lloyds credit card to make an initial payment of £500 on 1 February 2019, and the remainder by cheque on 13 February 2019. The £500 payment does not appear to have been attributed specifically to one part of the contract or the other.

On 29 April 2019 CI served what was described as a "termination notice" relating to the holiday club membership. It said that if no payment was received in relation to outstanding fees by 29 May 2019, the membership would be terminated.

There was then a gap of nearly four years before Mrs S's claims management company contacted Lloyds to make a claim under section 75 of the Consumer Credit Act 1974 ("CCA"). In her claim, Mrs S said SPS had made misrepresentations to her about a compensation claim against CI which had caused her to sign up with them, and she wanted to claim a full refund of the £4,740 she had paid to the company.

It appears no response was received from Lloyds, so Mrs S made a complaint to the bank late in June 2023. This was also not responded to, causing Mrs S to refer the matter to the Financial Ombudsman Service for an independent assessment.

One of our investigators looked into the complaint. He didn't think it should be upheld, reasoning that not enough evidence had been provided of SPS making misrepresentations to Mrs S regarding a compensation claim, and that SPS had been prevented from fulfilling its contract with her because she'd failed to pay fees to CI, causing the membership to be terminated. Our investigator didn't think it would have been reasonable for Lloyds to honour a section 75 claim on that basis. He also considered it had been too late for the bank to attempt to recover any funds for Mrs S via the disputed resolution mechanism known as "chargeback".

Mrs S disagreed and asked for an ombudsman to review her case. Our investigator asked if she had any further arguments to make, and her claims management company said that SPS had not done any work for her and had never contacted her after she had signed up

with them.

The case has now been passed to me to decide.

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 a consumer buys goods or services using a credit card, and something then goes wrong with the purchase, they may approach their credit card issuer for assistance. The card issuer may be able to help in obtaining a refund of any card payments made via a chargeback, or it may need to honour a claim under section 75 of the CCA.

Chargeback

When Mrs S contacted Lloyds she didn't ask for it to attempt a chargeback, but I would expect a card issuer to always consider whether a chargeback was a potential avenue to assist its customer, when approached with a potential dispute involving a card payment. Our investigator considered it was too late for a chargeback to be attempted at the point Mrs S contacted Lloyds, and I agree. Time limits apply to chargebacks, and in a case like Mrs S's a chargeback would need to have been attempted within 120 days of the date the service was meant to have been provided by.

I would take the 12 month deadline in the second part of the contract, to be the date the service was meant to have been provided by, which would have left Lloyds up until some point in June 2020 to attempt a chargeback. By the time Mrs S contacted the bank in January 2023, it was too late for the bank to try to assist via this avenue.

Section 75

Section 75 of the CCA allows a consumer to claim against their credit card issuer, so long as certain technical conditions have been met, in respect of any breach of contract or misrepresentation by a supplier of goods or services they have made a purchase from using the card.

Nobody has suggested that the technical conditions for a section 75 claim have not been met, so on this point I'll say only that, having considered the available evidence, I conclude the technical conditions have indeed been met. I've gone on to consider whether Mrs S had a claim against SPS in respect of a breach of contract or misrepresentation, which she would have been able to bring against Lloyds as a result of section 75.

In the context of Mrs S's case, a misrepresentation would be a false statement of fact or law made by SPS to her and which induced her to enter the multi-part contract with SPS and pay over the money that she did. A breach of contract occurs when one party fails to discharge its obligations to the other. These obligations may come about as a result of the express terms of the contract, or because of terms implied by legislation.

I will say firstly that the evidence supplied by Mrs S's claims management company is of a highly generic nature. I have seen the same letter of claim submitted on behalf of other consumers in relation to claims about companies other than SPS¹, and there is no direct testimony from Mrs S. Where verbal misrepresentation has been alleged, as here, a lack of

¹ Indeed, the name of another company appears to have been left in the claims management company's submissions to the bank.

any direct testimony from the complainant is problematic in my view. I have found it difficult as a consequence, to attach much weight to the statements made by Mrs S's claims management company regarding the alleged misrepresentations made to her about a compensation claim against her holiday club. I note the written contract with SPS does refer to a potential compensation claim being made on a no win, no fee basis, so I have no doubt that this would have been discussed, but the wording stated that no reimbursement was guaranteed, and given Mrs S signed the contract I think it's fair to assume she understood this.

Overall, I think there is insufficient evidence that Mrs S entered the contract with SPS as a result of misrepresentations made to her by SPS.

This brings me to the question of whether or not there was a breach of contract. There is slightly more evidence on this point, although in my view there are still gaps. The documentary evidence shows that Mrs S had been invoiced for over £8,000 by CI late in 2018, and that late in April 2019, almost three months after entering the contract with SPS, CI wrote stating it would be terminating the holiday club membership if no payment was received by the end of May 2019.

Our investigator concluded Mrs S had prevented SPS from fulfilling the contract by causing her holiday club membership to be terminated through her non-payment of fees. That may or may not be the case, but I will say here that there is no confirmation of what ultimately happened to the membership, or whether SPS had any involvement in any termination or relinquishment which occurred. We have no information, other than the claims management company's submissions (which are generic as already noted), about what happened after April 2019. Mrs S's claims management company said she heard nothing further from SPS after 2 February 2019. However, it would have been helpful to see evidence of any attempts Mrs S made to contact SPS to ascertain what progress was being made, or of her sending it the termination notice from CI, as her contract with SPS seems to have required her to do.

Ultimately, I'm unable to conclude that SPS breached its contract with Mrs S by failing to arrange for the relinquishment or termination of her CI membership within 12 months of 2 February 2019. Lloyds never responded to Mrs S's section 75 claim, but it wouldn't be fair or reasonable of me to require it to honour the claim given I've been unable to conclude Mrs S had a claim against SPS in respect of a breach of contract or misrepresentation.

I'll note here that I am aware that some aspects of this scenario bear similarities to scams which have been known to target timeshare and holiday club owners or members. Nevertheless, it is important that consumers and their representatives provide sufficient evidence to support their case. Here the evidence has been, in my opinion, of a very poor standard, and this has contributed to the conclusions I've reached.

My final decision

For the reasons explained above, I do not uphold Mrs S's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S to accept or reject my decision before 3 May 2024.

Will Culley
Ombudsman