

## The complaint

Miss M complains that Bank of Scotland plc (“BoS”) unfairly handled her claim under section 75 of the Consumer Credit Act 1974 (“CCA”) in relation to a timeshare product she purchased using her credit card.

## What happened

On 9 March 2015 Miss M says she agreed to purchase a timeshare product with a business who I’ll refer to as “R”. She says she funded payment for the product(s) purchased using a credit card issued by BoS in her personal name.

On 9 March 2021, using a professional representative (“the PR”), Miss M submitted a claim to BoS under section 75 of the CCA (“S75”). The PR alleged that R had misrepresented the timeshare product to Miss S, having told her, “[...] *she would have excellent holidays at the time of her choosing*”. The PR said Miss M “*was later advised with the number of points purchased she was unable to access any holidays*”. And because R didn’t provide the product they were contracted to, the PR thought they had also breached the contract. The PR also alleged that Miss M was pressured in to entering the agreement.

As part of the claim, the PR referenced verbal misrepresentations made by representatives of another company who I’ll refer to as “business I”.

In response, BoS said they couldn’t see that a S75 claim had been raised for Miss M and they would require a letter of authorisation from her before they could review the claim submitted by the PR. BoS went on to say that the claim needed to be raised with their S75 team and not through their complaints process. BoS said, “*the statute of limitations in the UK is six years (five in Scotland) so this is the deadline you have to work to if you were to pursue a Section 75 claim through the courts*”.

The PR didn’t accept BoS’s response, so referred Miss S’s complaint to this service. One of this service’s investigators considered all the evidence and information provided. In doing so, they didn’t think Miss M’s complaint should be upheld. Our investigator thought that Scottish Law applied to Miss M’s credit card agreement. And because of that, Miss M had five years to make her claim. As the claim was made after five years, our investigator thought it had been brought too late. The investigator also didn’t find any evidence to support the claim for breach of contract.

Miss M disagreed with our investigator’s findings. So, the PR asked that her complaint be referred to an ombudsman for a final decision. Having considered all the evidence and information, whilst I was inclined to reach the same outcome as our investigator, I considered some issues which I don’t feel were previously fully addressed. So, I issued a provisional decision on 4 October 2023 asking each party to provide any new relevant comments, information or evidence for me to consider before I issue a final decision

In my provisional decision I said:

When considering what’s fair and reasonable, DISP<sup>1</sup> 3.6.4R of the Financial Conduct Authority (“FCA”) Handbook means I’m required to take into account; relevant law and regulations, relevant regulatory rules, guidance and standards and codes of

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<sup>1</sup> The FCA’s Dispute Resolution: Complaints Sourcebook (“DISP”)

practice; and, where appropriate, what I consider was good industry practice at the relevant time.

S75 provides protection to consumers for goods or services bought using credit. Where payment is made by Miss M using a credit card under a pre-existing credit card agreement, it is possible that S75 applies – subject to any limitations and restrictions. So, this means that Miss M may be afforded the protection offered to borrowers like her under those provisions. As a result, I've taken this section into account together with any other relevant sections of the CCA when deciding what's fair in the circumstances of this case.

It's important to stress that this service's role as an Alternative Dispute Resolution Service (ADR) is to provide mediation in the event of a dispute. The complaint being considered here specifically relates to whether I believe BoS's treatment of Miss M's claim was fair and reasonable given all the evidence and information available. While the decision of an ombudsman can be legally binding, if accepted by the consumer, we do not provide a legal service.

Where evidence is incomplete, inconclusive, incongruent or contradictory, my decision is made on the balance of probabilities – which, in other words, means I've based it on what I think is more likely than not to have happened given the evidence that's available from the time and the wider circumstances.

#### What Miss M's claim made in time?

BoS have referred this service to the credit agreement that applies to Miss M's credit card account with them. In particular, they believe that the limitation timescale that applies to any claim under S75 is five years under Scottish law<sup>2</sup>, due to Miss M's place of residency.

A claim under S75 is a "like" claim. In other words, where Miss M believes she has a claim for misrepresentation or breach of contract against the supplier, those provisions enable her to make a "like" claim against BoS. The timescales and rules that apply will normally be governed by the legal jurisdiction that applies to the underlying transaction and agreement – in this case, the timeshare purchase agreement. So, it's possible that the timescales under Scottish law don't necessarily apply here.

However, in view of my findings below, I don't think I need to make a formal finding on this aspect.

#### Does Miss M have a valid claim under S75?

S75(1) says, "*If the debtor [here that's Miss M] under a valid 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*" (emphasis added).

In order to link any credit card payment made to the timeshare product transaction here, I would need to see evidence of what that payment specifically related to. And importantly, that it was contractually linked to the timeshare product transaction.

The claim submitted by the PR refers to an amount of £2,300. I've seen various documents from the time of the sale which appear to reference different products and benefits as supplied to Miss M by different parties and businesses at that time. In particular. There is a document headed "*Credit/Debit Card Authorisation*" issued by a business who I'll refer to as "business S". It includes a payment schedule requiring

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<sup>2</sup> The Prescription and Limitation (Scotland) Act 1973

payments of £575 to be made on 20 April, May, June and July 2015 – totalling £2,300. The document also quotes the credit card number which relates to Miss M's account with BoS.

I've also seen copies of Miss M's credit card statements with BoS covering the period in question. Having reviewed these, I can't see any evidence that Miss M used her BoS credit card to make any of the payments scheduled within the Credit/Debit Card Authorisation document – whether to R or business S.

The difficulty I have is identifying what was actually said at the time of the sale. So, I've thought about this alongside the evidence available. Although not determinative of the matter, I haven't seen any documentation which supports the claim made by the PR for £2,300. That's because I can't reasonably conclude that Miss M did make payments totalling £2,300 to R using her BoS credit card to purchase the timeshare product in question.

However, I have seen a payment from Miss M's credit card account with BoS dated 9 March 2015 (the date of the purchase) for £866.48 (€1,208.25) to a business who I'll refer to as "business M". The sum of €1,208.25 is referred to within a separate membership application document for another product which, it appears, was purchased from business M at the same time. But this doesn't appear to form part of the claim submitted by the PR and doesn't appear to relate to a service or product specifically supplied by R.

#### The Debtor-Creditor-Supplier ("DCS") relationship

As I've referenced above, a valid DCS agreement is a precondition to a claim under S75. The claim submitted by the PR refers to a timeshare product with R that they allege was miss sold by R. They have also made a claim for breach of contract by R. But I've found no evidence of any payment being made to that company using Miss M's credit card with BoS. The only payment I've found was to business M – as referred to above.

The High Court's judgment in the case of *Steiner v National Westminster Bank PLC* (2022) considered a scenario, with similar circumstances, in order to establish the validity of the DCS relationship in that case. However, given the facts and circumstances of this complaint and my overall outcome with those in mind, I don't think it's necessary to make a formal finding of the DCS arrangement for the purpose of this decision. That's because I don't think Miss M has a valid claim under S75 anyway.

#### Summary

Having considered everything that's been said and provided, I've been unable to establish that there's a valid claim to be made under S75. Because of that, I can't currently conclude that BoS's failure to uphold Miss M's claim was ultimately unfair or unreasonable. So, I don't currently intend to ask them to do anything more.

#### **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.

BoS have confirmed they've nothing further to add in response to my provisional findings. The PR haven't responded to my provisional decision. However, Miss M has been in contact with this service to seek clarification on certain aspects.

In particular, she told this service that the payments relating to the amount of £2,300 were made using a different credit card issued by another financial business. So, it seems clear that the transaction referred to in the PR's claim wasn't actually one that involved BoS.

Miss M went on to explain that the payment of £866.48 which was made using her BoS credit card was part of the same transaction – essentially a deposit payment. She said that this and the amount of £2,300 all related to the timeshare purchase she made. But as I've already explained in my provisional findings, the different payments appear to have been made to different parties. This suggests they may be separate transactions.

I asked that Mr M provide documentary evidence to show that the payments were all related to the timeshare purchase in March 2015. Preferably in the form of a purchase agreement. And also, that the contract was with one particular supplier rather than across different suppliers. In other words, part of a single purchase contract.

Miss M has provided copies of two documents. The first is entitled "*Purchaser details & application for membership of the scheme*". This document refers to membership of a scheme operated by business S – not R as detailed in the claim submitted by the PR. Furthermore, it clearly shows the purchase price of the membership as being £2,300. And Miss M has confirmed, payments towards this amount were not made using her credit card with BoS.

The second document appear to be the front page of a purchase agreement with business S. However, this makes no reference to any purchase price.

Unfortunately, that means I'm unable to confidently verify what the BoS credit card transaction I've seen specifically related to. And whether it was in any way linked to the subsequent payments totalling £2,300 – the subject of the claim submitted by the PR.

The documents provided by Miss M make no reference to a payment of £866.48 or €1,208.25. So, I've been unable to establish whether the payment from Miss M's BoS credit Card did, in fact, form part of the purchase price paid for the product she purchased. Because of that, I still don't think Miss M has demonstrated that the claim submitted is valid under S75. There's simply no evidence that Miss M used her Bos Credit Card to purchase the timeshare product. Because of that, I'm not persuaded to vary from my provisional findings.

### **My final decision**

For the reasons set out above, I don't uphold Miss M's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss M to accept or reject my decision before 30 November 2023.

Dave Morgan  
**Ombudsman**