

The complaint

Mrs G complains Lloyds Bank PLC (“Lloyds”) hasn’t treated her fairly in connection with a claim she brought under section 75 of the Consumer Credit Act 1974 (“CCA”).

What happened

Our investigator set out the background to Mrs G’s complaint in a good degree of detail in her assessment of October 2023, so I will only summarise the key events as follows:

- Mrs G had a timeshare at a resort in Malta (“the resort”). Representatives of a company I’ll call “CJA” met with her in February 2020. This led to her signing a contract whereby CJA would arrange for the “relinquishment” of her timeshare for a price of £3,600, within 12 months of 27 February 2020. Mrs G says CJA made various verbal representations at this meeting. Mrs G paid part of the £3,600 on her Lloyds credit card, and the rest by debit card from the same bank.
- Mrs G received a letter from a third party, “FA”, in January 2021, stating that it had written to the resort but not had a reply. It considered this meant the timeshare had been relinquished/terminated and the contract with CJA had been fulfilled.
- The resort wrote to Mrs G in mid-February 2021, noting the contact it had received from FA and asking Mrs G to confirm she wanted to relinquish/terminate her timeshare. It said normally there would be maintenance fees to pay or bring up to date, but it was willing to waive these.
- Mrs G confirmed with the resort in October 2021 that she wanted to relinquish/terminate the timeshare, and she received a confirmation of this in November 2021.
- Mrs G considered she’d paid for a service from CJA that:
 - She could simply have completed herself for free with little effort.
 - Hadn’t been completed by the contractual deadline of 12 months.
 - Had been misrepresented to her.
- A section 75 claim was raised with Lloyds. The bank declined the claim, and a subsequent complaint from Mrs G, on the grounds that CJA had fulfilled its contractual obligations to her, and it had been up to her to check that she could have completed the services herself for free.

Dissatisfied with this response, Mrs G brought her complaint to the Financial Ombudsman Service for an independent assessment. One of our investigators looked into the complaint and arrived at the following conclusions:

- It had been too late for Lloyds to attempt to get Mrs G’s money back via the

“chargeback” process.

- The contract had been fulfilled on CJA’s side because its actions, through FA, had prompted the resort to contact Mrs G to confirm she wished to relinquish/terminate her timeshare. The necessary steps had been taken by CJA and just required Mrs G’s confirmation.
- While it was technically correct that the relinquishment did not take place until October 2021, outside of the 12 month timeframe stipulated by CJA, there wasn’t evidence Mrs G had contacted CJA to terminate the contract and require a full refund, as the contract required her to do in the circumstances.
- It was difficult to say what Mrs G might have been told in a face-to-face meeting by CJA, and whether they were making statements of opinion or fact. Ultimately however, the contract with CJA didn’t appear to be different to what had been described, and it had come with a 14 day cooling off period for Mrs G to make her own enquiries.
- There was no guarantee that it would have been possible in March 2020 to relinquish the timeshare for free with the resort.

Our investigator didn’t think the complaint should be upheld. Mrs G didn’t agree. She provided a recent email from the resort which stated her timeshare had been terminated in October 2021 for non-payment of annual membership fees. This, she said, was proof that CJA were not the reason why her timeshare was relinquished.

Our investigator considered this new evidence but was not convinced – she noted that it appeared to contradict what the resort had told Mrs G back in 2021. She also noted that the contract with CJA did not entitle Mrs G to a refund if the timeshare was relinquished/terminated while the contract with CJA remained active. There was no evidence that Mrs G had contacted CJA to end the contract, so it was likely still running at the point the timeshare was relinquished/terminated.

Mrs G asked for an ombudsman to consider her case, and so the complaint has 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 via the dispute resolution mechanism administered by the card scheme – often known as “chargeback” – or it may need to honour a claim under section 75 of the CCA.

Mrs G’s initial claim to Lloyds was not formulated as a request for the bank to attempt a chargeback, but I would expect a card issuer faced with a consumer disputing a purchase made on their card, to consider whether a chargeback was a potential avenue to assist their customer. Our investigator considered that it was too late for a chargeback to be attempted by the time Mrs G contacted Lloyds, and I agree. Time limits apply to chargebacks, and these are set by the relevant card scheme. In Mrs G’s case, that was Mastercard.

The Mastercard rules state that a chargeback brought on the grounds that a service has not

been provided as agreed, must be made within 120 days of the date the service was meant to have been provided by. If we take the 12 month deadline in CJA's contract as the date the service was meant to have been provided by, that left until 27 June 2021 for a chargeback to be attempted. Mrs G does not appear to have contacted Lloyds until late in 2022, so it was too late for the bank to help her via this avenue.

That leaves the question of the section 75 claim itself, and whether Lloyds should have honoured this. Section 75 of the CCA allows a consumer to claim against their credit card issuer, so long as certain technical conditions are 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.

It's not been argued that the technical conditions for a section 75 claim have not been met, so on this I'll say only that, having considered the available evidence, I conclude the technical conditions have indeed been met. The key point in dispute is whether Mrs G has a claim against the supplier, CJA, for breach of contract or misrepresentation, which she would therefore be able to make against Lloyds by virtue of section 75.

A breach of contract occurs when one party to the contract fails to discharge its obligations to the other. Contractual obligations may take the form of express terms, or implied terms. A misrepresentation is a false statement of fact or law made by one person to another and which induces that other person to do something that is to their disadvantage – such as enter a contract.

Misrepresentation

Our investigator observed that it was difficult to verify what had been said by CJA's representatives in the context of the face-to-face conversation which is said to have taken place when they sold their services to Mrs G, and whether any statements made were statements of fact or statements of opinion.

Having read Mrs G's original representations to Lloyds, she said CJA had told her that the timeshare was in perpetuity and would be passed on her family, and that debt collectors would come to her house on behalf of the resort in relation to unpaid maintenance fees. Assuming these statements were made, no compelling evidence has been supplied that they were untrue. And while CJA *may* have sold Mrs G a service which was unnecessary in the sense she could relinquish/terminate her timeshare *herself*, that doesn't mean the service was misrepresented or that had Mrs G contacted the resort herself, that she'd have been able to relinquish/terminate the timeshare for free.¹

Overall, I don't think there is persuasive evidence that Mrs G entered the contract with CJA as a result of misrepresentations made to her by CJA.

Breach of contract

The contract with CJA stated that relinquishment of Mrs G's timeshare would be completed within 12 months of the start date of the contract. If this did not occur, then Mrs G had the option to terminate the contract by serving a notice by email, and she would then receive a full refund of what she'd paid. There were various restrictions on refunds – for example the contract stated there was no right to a refund if Mrs G had entered into her own negotiations with the resort. If Mrs G did not terminate the contract and require a refund, the contract

¹ The resort's February 2021 email to Mrs G noted that they would normally request the payment of any outstanding management/maintenance fees, but were "currently offering to waive payment". In an email of October 2023, the resort suggested Mrs G did have outstanding fees.

appears to have become an indefinite one, ending when Mrs G terminated it for a refund, a successful relinquishment was achieved, or CJA terminated it for breaches by Mrs G.

I don't think CJA successfully arranged the relinquishment/termination of the timeshare within the 12 month period. FA clearly wrote to the resort on CJA's behalf, as the resort emailed Mrs G noting that it had been contacted by them, but I don't think FA successfully relinquished the timeshare despite having claimed to have done so. It appears that because FA received no reply from the resort, it took that to mean the timeshare had been relinquished or terminated. It wrote to Mrs G to tell her this, and that, in essence, it and CJA's work was done. It's unclear on what legal basis it thought this, but it's apparent the resort did not consider the timeshare to have been relinquished given its later contact with Mrs G.

I think Mrs G would have been entitled to enforce the refund provisions in her contract with CJA, once 27 February 2021 had come and gone and it was apparent the timeshare had not been relinquished. Our investigator has noted this on a couple of occasions, but Mrs G has not provided any evidence that she contacted CJA to terminate the contract and require a refund as per the terms. Had she contacted CJA to require a refund, and this had not been provided, then this would have been a breach of contract which she may have been able to hold Lloyds liable for under section 75 of the CCA.

However, as things stand, I'm unable to conclude there has been a breach of contract or misrepresentation by CJA. It follows that I don't think Lloyds acted unfairly or unreasonably in declining Mrs G's section 75 claim.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs G to accept or reject my decision before 5 April 2024.

Will Culley
Ombudsman