

## The complaint

Mrs A complains that Bank of Scotland plc trading as Halifax (“Halifax”) unfairly declined her claim under section 75 of the Consumer Credit Act 1974 (“CCA”) in relation to a payment she made using her credit card to purchase a timeshare product.

## What happened

In or around June 2018, Mrs A (together with another party) met with a supplier of holiday and timeshare products who I’ll refer to as “L”. During the course of that meeting, they decided to upgrade their existing timeshare points-based membership by purchasing an additional 44,000 points in a membership scheme operated by L. The purchase was funded, in part, by payment made from a credit card (provided by Halifax) in Mrs A’s sole name.

In or around December 2018, Mrs A submitted a claim to Halifax under Section 75 of the CCA (“S75”). This particular claim raised concerns about payments Mrs A made using her Halifax credit card. In particular, £4,980 in June 2016, £1,487.50 in June 2018 and £1,462.50 in July 2018. Mrs A alleged that L had misrepresented the purchases she’d made using her credit card and thought Halifax were jointly liable under S75 for those misrepresentations.

Halifax didn’t uphold Mrs A’s claim as she was unable to provide sufficient information to prove there’d been either a breach of contract or misrepresentation.

In or around October 2022, using a professional representative (“the PR”), Mrs A submitted a further claim to Halifax, again under S75. The PR alleged that Mrs A purchased the timeshare product having relied upon representations made by L which turned out not to be true. And under S75, Halifax are jointly liable for those misrepresentations. In particular, the PR referred to credit card payments Mrs A had made in June 2018 for £1,487.50 and August 2018 for £1,462.50. The PR alleged:

- the product purchased was a long term (near perpetual) contract;
- included unlimited liability for management charges over a period likely to exceed Mrs A’s lifespan;
- Mrs A was pressured into entering into an agreement on the day;
- documentation wasn’t plain and intelligible and didn’t accurately describe the liabilities incurred;
- the purchase contract included no provision for withdrawal; and
- L repeatedly sold timeshare products as a remedy to the perceived defects of earlier purchases.

Halifax didn’t uphold Mrs A’s claim as they couldn’t find any evidence to support any breach of contract or misrepresentation. Halifax thought the contract clearly showed the agreed expiry date, so Mrs A would’ve been aware of that at the time of the sale.

Unhappy with Halifax’s response, the PR referred Mrs A’s claim to this service as a complaint. Halifax confirmed they hadn’t received a complaint about the claim outcome. But agreed to investigate and provide a response. Having done so, they didn’t agree they’d done anything wrong in rejecting Mrs A’s claim.

One of this service's investigators considered all the information and evidence available. Having done so, they also couldn't find any evidence to support any allegations of misrepresentation or breach of contract that Halifax might be liable for under S75. So, our investigator didn't think Halifax's response to Mrs A's complaint was unfair or unreasonable.

The PR didn't agree with our investigator's findings and thought they'd failed to assess Mrs A's claim properly under S75. In support, they provided a detailed explanation of the circumstances of Mrs A's purchase. In doing so, they raised additional allegations of misrepresentation which it doesn't appear were included within the original claim. Further, they referenced the experience of other consumers when making purchases from L, together with their own (general) observations of L – as a timeshare supplier.

As an informal resolution couldn't be achieved, Mrs A's complaint was passed to me to consider further. Having done that, I was inclined to reach the same outcome as our investigator. But I considered a number of issues which may not have been fully addressed or explained previously. So, I issued a provisional decision on 7 February 2024 giving both sides the chance to respond before I reach my final decision.

In my provisional decision, I said:

#### Relevant considerations

When considering what's fair and reasonable, DISP<sup>1</sup> 3.6.4R of the FCA<sup>2</sup> Handbook means I'm required to take into account; relevant law and regulations, relevant regulatory rules, guidance and standards and codes of practice; and, where appropriate, what I consider was good industry practice at the relevant time.

S75 provides consumers with protection for goods or services bought using credit. Specifically, where there's evidence of misrepresentation or breach of contract. Mrs A paid for the timeshare product in part using her Halifax credit card. So it isn't in dispute that S75 applies here. This means Mrs A is afforded the protection offered to borrowers like her under those provisions. And as a result, I've taken this section into account when deciding what's fair in the circumstances of this case.

It's important to distinguish between the complaint being considered here and the legal claim. The complaint this service is able to consider specifically relates to whether I believe Halifax's failure to uphold Mrs A's claim was fair and reasonable given all the evidence and information available to me, rather than actually deciding the legal claim itself.

It's also relevant to stress that this service's role as an Alternative Dispute Resolution Service ("ADR") is to provide mediation in the event of a dispute. While the decision of an ombudsman can be legally binding, if accepted by the consumer, we don't provide a legal service and this service isn't able to make legal findings – that is the role of the courts. Where a consumer doesn't accept the findings of an ombudsman, this doesn't prejudice their right to pursue their claim in other ways.

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. In doing so, my role isn't necessarily to address in my decision every single point that's been made. And for that reason, I'm only going to refer to what I believe are the most salient points having considered everything that's been said and provided.

#### The product purchased

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<sup>1</sup> Dispute Resolution: The Complaints sourcebook (DISP)

<sup>2</sup> Financial Conduct Authority

The claim submitted by the PR refers to two payments made in June and August 2018. From the information I've seen, it appears these payment related to two distinct and different products. The payment of £1,462.50 made in August 2018 appears to relate to the purchase of additional points in a timeshare product provided by L. Documentation relating to that purchase suggests the sale originally took place in June 2018, albeit payment wasn't actually made until August 2018.

The payment of £1,487.50 doesn't appear to relate to the purchase of a timeshare product. Instead, the documentation I've seen suggests it relates to the purchase of an "exclusive holiday VIP WEEK" to be taken within 12 months of the purchase date – that being in June 2018. The document specifically states; "This is not a timeshare purchase [...]". As the claim submitted appears to raise allegations specifically relating to a timeshare product, it doesn't appear that this particular transaction and purchase actually forms part of the claim and allegations made. So, I haven't considered this aspect any further.

#### Was the timeshare product misrepresented?

For me to conclude there was misrepresentation by L in the way that has been alleged, generally speaking, I would need to be satisfied, based on the available evidence, that L made false statements of fact when selling the timeshare product. In other words, that they told Mrs A something that wasn't true in relation to the allegations raised. I would also need to be satisfied that any misrepresentation was material in inducing Mrs A to enter into the contract. This means I would need to be persuaded that she reasonably relied upon false statements when deciding to buy the timeshare points.

From the information available, I can't be certain about what Mrs A was specifically told (or not told) about the benefits of the products she purchased. It was, however, indicated that she was (or wasn't) told these things. So, I've thought about that alongside the evidence that is available from the time.

The front page of the purchase agreement clearly states an "Expiry date: 31/12/2059". Based upon this, I don't agree that the contract operated "in perpetuity". And given its prominence and the fact that Mrs A has initialled that document, I can't reasonably conclude that L didn't make that clear to Mrs A.

#### Time to consider and provision to withdraw from the agreement

I've seen a document headed "RIGHT OF WITHDRAWAL" which appears to have been signed by the purchaser here. It goes on to say; "The consumer has the right to withdraw from this contract within 14 calendar days without giving any reason". So, I don't agree that there was no withdrawal provision. Or that it wasn't made clear to Mrs A at the time of the sale.

I think it's relevant to acknowledge Mrs A's existing membership and relationship with L. She'd previously purchased a product from them in 2005, with subsequent purchases in 2006, 2009, 2013 and 2016. So, I think it's reasonable to conclude she had a level awareness about the products she'd purchased, how they operated and any associated costs. I also think it's reasonable to conclude Mrs A would be familiar with L (as a timeshare supplier) the format of their meetings and sales presentations, and their documentation. Particularly as the purchase in June 2018 certainly wasn't her first.

Even if I were to find that Mrs A wasn't given adequate opportunity to read, consider and understand the purchase documentation at the time of the sale - and I make no such finding - I would expect her to have had sufficient time in which to consider her decision within the subsequent 14 days. And, where appropriate, raise any questions or concerns before any payment was made and the purchase completed. There's no

suggestion or evidence that Mrs A did raise any questions or concerns prior to the sale being completed. Or that she had any intention of cancelling the agreement. And given it doesn't appear the payment wasn't made until more than two months after the time of the sale, I can't reasonably say Mrs A hadn't had adequate time to consider her purchase fully.

#### The pressured sale and process

The claim suggests Mrs A was pressured into entering into the agreement on the day. But this isn't something that would constitute misrepresentation or a breach of contract under S75. However, I acknowledge what the PR have said about this and have considered the allegation further in reaching my decision.

I can understand why it might be argued that any prolonged presentation might have felt like a pressured sale – especially if, as Mrs A approached the closing stages, she was going to have to make a decision on the day in order to avoid missing out on an offer that may not have been available at a later date.

Against the straightforward measure of pressure as it's commonly understood, I find it hard to argue that Mrs A agreed to the purchase in 2018 when she simply didn't want to. I haven't seen any evidence to demonstrate that she went on to say something to L, after the purchase, suggesting she'd agreed to it when she didn't want to. And neither the PR nor Mrs A have provided a credible explanation for why she didn't subsequently seek to cancel the transaction within the 14-day cooling off period permitted here.

If Mrs A only agreed to the purchase because she felt pressured, I find this aspect difficult to reconcile with the allegation in question. I haven't seen anything substantive to suggest she was obviously harassed or coerced into the agreement. And because of that, I'm not persuaded that there's sufficient evidence to demonstrate that Mrs A made the decision to proceed because her ability to exercise choice was – or was likely to have been – significantly impaired contrary to the Consumer Protection from Unfair Trading Regulations 2008 ("CPUT").

#### The ongoing annual charges

The PR suggest that Mrs A wasn't given sufficient information about the ongoing costs associated with the additional points purchased (i.e. the annual management charges) and that they were concealed from Mrs A at the time of the sale. The PR allege that such terms breach regulations 12 and 13 of the Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010 ("the TRs").

One of the main aims of the TRs was to enable consumers to understand the financial implications of their purchase so that they are able to make an informed decision. If a supplier's disclosure didn't recognise that aim, and the consumer ultimately lost out – or almost certainly stands to lose out - from having entered into a contract whose financial implications they didn't fully understand at the time of contracting, it's possible the product could be found to have been misrepresented and ultimately led to unfairness. This aspect could be considered as part of a claim under Section 140A of the CCA ("S140A"). However, I can't see that the PR have specifically submitted such a claim. And in any event, only a court has the power to make a determination under that provision. That being said, as it's relevant law, I've considered it further in reaching my decision.

It's possible L didn't give Mrs A sufficient information, in good time, on the various charges she could have been subject to, under the timeshare points purchased, in order to satisfy its regulatory responsibility under Regulation 12 of the TRs. But even if that was the case, as I've said above, Mrs A was an existing member and had been for several years by the time the sale in question happened. So, I think her

experience as a member is likely to have given her enough insight into what the ongoing costs of membership were like and might be like going forward. And as she made the decision to enter into the purchase agreement with that experience in mind, in the absence of a credible explanation from her as to why, at the time of sale, L's cost disclosure (or lack of) could be said to have played a significant part in that decision, I'm not persuaded it did.

#### Was the right relationship in place?

Under S75, a "debtor-creditor-supplier agreement" is a precondition to a claim under that provision. As the purchase agreement indicates that payments under that agreement had to be made to another party rather than the supplier directly, it's now possible that there was no such agreement in place following the High Court's judgment in the case of *Steiner v National Westminster Bank PLC* [2022].

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 on the debtor-creditor-supplier arrangement for the purpose of this decision because I don't think Mrs A's complaint should succeed on its merits anyway.

#### Other considerations

In responding to our investigator's findings, the PR raised further allegations to support their argument that the product was misrepresented to Mrs A, and in breach of the TRs that applied. However, as I can't see that any of these allegations formed part of the claim submitted to Halifax, which they responded to, it doesn't appear they've had opportunity to consider them. So, it wouldn't be appropriate for me to comment further on these aspects.

Further, the PR reference, what is said to be, the experience of other consumers when agreeing to the purchase of products from L. But I can't see that these are evidentially supported or how those comments and allegations assist me in establishing the facts of what happened in Mrs A's specific circumstances.

#### Summary

I would like to reassure Mrs A that I've carefully considered everything that's been said and provided. I realise she will be extremely disappointed, but I haven't seen anything that persuades me that Halifax's response to her claim was unfair or unreasonable. Because of that, and for the reasons above, I don't currently intend to ask Halifax to do anything more here.

### **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.

Halifax haven't responded to my provisional findings. And while the PR acknowledged receipt, they haven't provided any new evidence or comments for me to consider. In the circumstances, I've no reason to vary from my provisional findings. So, I won't be asking Halifax to do anything more here.

### **My final decision**

For the reasons set out above, I don't uphold Mrs A's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs A to accept or reject my decision before 4 April 2024.

Dave Morgan  
**Ombudsman**