

## **The complaint**

Mr N complains that Canada Square Operations Limited won't refund to him the money that he paid for a holiday product. He's being represented in his complaint by a legal adviser.

## **What happened**

Mr N's then representative says that Mr N bought a holiday product in July 2005 for a total amount of US\$14,326.01 and that he paid for part of the price using credit for which Canada Square Operations is now responsible. It provided credit card statements showing payments that Mr N had made of £468.76 in July 2005 and £213.08 in October 2005. His representative made claims to Canada Square Operations in September 2019 under sections 75 and 140A of the Consumer Credit Act 1974. It said that the holiday product was misrepresented to Mr N and that there were unfair negotiations.

Canada Square Operations said that Mr N had failed to provide it with any of the terms of the purported agreement and it had been unable to establish any connection between the payments and any agreement between Mr N and the supplier but it said that any claims would be time-barred under the Limitation Act 1980. Mr N wasn't satisfied with its response so a complaint was made to this service. Mr N representative then changed.

Our investigator didn't recommend that Mr N's complaint should be upheld. She said that Mr N bought the holiday product in July 2005 but didn't contact Canada Square Operations about it until September 2019 (more than six years later) to raise a claim, and she thought that he was outside of the time limits for making a claim under section 75 so she thought that it was fair for Canada Square Operations to turn down his claim. She said that Mr N's representative complaint letter alleged that the sale was high pressured, and the sales representative acted recklessly but there was no additional detail to substantiate those allegations and nothing to suggest the existence of an unfair relationship so there was no substantive argument on section 140A for her to consider and she made no finding on such a claim.

Mr N representative, on Mr N's behalf, has asked for this complaint to be considered by an ombudsman. It said that a full substantive response would follow upon receipt of instructions from Mr N but no such response has been received.

## **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.

Having done so, I agree with our investigator that Mr N's complaint shouldn't be upheld but for these reasons:

- we don't have a free hand to consider every complaint that's referred to us and our rules, which we're required by law to follow, say – amongst other things – that we can't normally deal with a complaint if it's referred to us more than six years after the event complained of; or (if later) more than three years from the date on which the

complainant became aware (or ought reasonably to have become aware) that they had cause for complaint;

- Mr N's complaint is that Canada Square Operations turned down the claims that he'd made to it and I accept that he referred his complaint to this service within six years of that happening - but I need to consider whether the Limitation Act applies to his claims;
- I've not been provided with all of the documents that I consider that Mr N is likely to have signed to buy the holiday product in July 2005 or a full explanation of the credit that he used to pay for it – but I make this decision on the basis that he used credit of at least £100 for which Canada Square Operations is now responsible to pay part of the price of the holiday product;
- Mr N's claims were made under sections 75 and 140A but I'm not determining the outcome of those claims in this decision as only a court would be able to do that - I'm considering whether or not Canada Square Operations' response to those claims was fair and reasonable in the circumstances;
- section 75 gives a consumer an equal right to claim against the supplier of goods or services or the provider of credit if there's been a breach of contract or misrepresentation by the supplier (provided that certain criteria set out in that section are met);
- Mr N's claim under section 75 is that the holiday product was misrepresented to him and that he wouldn't have bought it if it hadn't been misrepresented to him - if the criteria for a claim under section 75 were met, Canada Square Operations would be expected to consider that claim unless the claim was brought outside of the time limits set out in the Limitation Act in which case it would be entitled to rely on the Limitation Act and to not consider the claim;
- the time limit for a misrepresentation claim (whether under section 2 or 9 of the Limitation Act) is six years from the date on which the cause of action accrued (which is when everything needed to make a claim had occurred);
- I consider that Mr N could have made a claim to the supplier or Canada Square Operations about the misrepresentations that he says induced him into buying the holiday product in July 2005 as that was the latest time that any misrepresentations would have been made to him and any loss would have been incurred as that was when he would also have used the credit to pay for part of the purchase price;
- I consider that his cause of action accrued would have accrued at that time, so he would have had six years from then to bring a misrepresentation claim against either the supplier or Canada Square Operations – but a claim wasn't made under section 75 until September 2019, more than fourteen years later, which was outside of the time limits set out in the Limitation Act so I consider that Canada Square Operations has a defence to the claim and I find that it wasn't unreasonable for it to reject that claim;
- Mr N's representative says that there were also unfair negotiations between Mr N and the supplier so a claim was made under section 140A - section 140A gives a court the power, amongst other things, to require a creditor to repay any sum paid by the debtor under a credit agreement if it determines that there's an unfair relationship between the debtor and the creditor;
- our investigator said that there was no additional detail to substantiate the allegations about the unfair negotiations and nothing to suggest the existence of an unfair relationship so she made no finding on a claim that there was an unfair relationship between Mr N and Canada Square Operations;

- Mr N's representative says that Mr N had confirmed that he paid off his credit card in full before August 2010;
- the courts have said, when considering section 140A, that the time for limitation purposes runs from the date that the credit agreement ended (if it was not still running at the time the claim was made) and the limitation period for a claim under section 140A is six years;
- even if a claim under section 140A had been fully and properly made to Canada Square Operations in Mr N's representative's letter to it in September 2019, the claim would have been made more than six years after he'd paid off his credit card in full so I consider that Canada Square Operations would have had a defence to any such claim and I find that it wouldn't have been unreasonable for it to have rejected it;
- I consider that Canada Square Operations' response to Mr N's claims was fair and reasonable in these circumstances; and
- I find that it wouldn't be fair or reasonable for me to require Canada Square Operations to refund to Mr N any of the money that he paid for the holiday product, to pay him any compensation or to take any other action in response to his complaint.

### **My final decision**

My decision is that I don't uphold Mr N's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr N to accept or reject my decision before 20 June 2023.

Jarrold Hastings  
**Ombudsman**