

The complaint

Mrs M complains that Lloyds Bank plc won't refund to her the money that she and her husband paid for an ownership interest in a holiday club. She's being represented in her complaint by a claims management company.

What happened

Mrs M and her husband entered into a holiday ownership purchase agreement in February 2017. The purchase price was £23,300 and Mrs M agreed to make payments of £1,165 in each of March, April and May 2017 to the holiday company using her Lloyds Bank credit card. Mrs M and her husband also entered into a loan agreement for a loan of £19,805 with a lender.

Mrs M's representative made a claim, on behalf of Mrs M, to Lloyds Bank in June 2020 under section 75 of the Consumer Credit Act 1974. It said that the holiday company and Lloyds Bank misrepresented the product and breached the contract and regulations (including a European directive, Spanish law and the Unfair Terms in Consumer Contract Regulations 1999) and that the breaches of statute and regulations made the purchase agreement, and Mrs M's payment using her Lloyds Bank credit card, null and void.

Mrs M hadn't received a response from Lloyds Bank so a complaint was made to this service. This service contacted Lloyds Bank and it said that it hadn't received the June 2020 claim letter so it then considered her claim. It said that it didn't agree that Mrs M had proven a breach of contract or misrepresentation by the holiday company.

Our investigator didn't recommend that Mrs M's complaint should be upheld as she didn't think that Lloyds Bank's decision to turn down her claims was unfair or unreasonable. She wasn't persuaded that there was a misrepresentation at the time of sale and she didn't think that the holiday company had breached the contract that had been agreed with Mrs M and her husband. She also considered the claim under section 140A of the Consumer Credit Act but she said that she hadn't seen enough to suggest that the relationship between Mrs M and Lloyds Bank was unfair and she wasn't persuaded that a court would reach the conclusion that the relationship was unfair.

Mrs M's representative says that Mrs M doesn't agree with our investigator's recommendation and it asked for her complaint to be considered by an ombudsman. It provided detailed responses to that recommendation in May and September 2022 and May 2023. It outlined in its May 2022 letter its analysis of the EU directive and why the purchase agreement doesn't comply with the directive. It says that the breaches of the EU directive make the purchase agreement null and void and that, as a consequence, the related credit card agreement with Lloyds Bank is null and void.

It outlined in its September 2022 letter its analysis of the Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010 and the reasons that it says that the regulations were breached and that Lloyds Bank breached its duty of care to Mrs M. It also says that Mrs M has a cause in negligence against Lloyds Bank for the breach of duty of

care and a breach of contract and that she only discovered the breaches when she engaged it in February 2020. It referred in that letter to section 140A.

It referred in its May 2023 letter to a judicial review decision and says that Mrs M's claim shares the same characteristics as the cases which were reviewed. It says that it sees no reason for this service not to take the same stance with Mrs M's claims as it did on the fractional timeshare claims that were the subject of the review in which it was found that the relationships between the debtor and creditor were unfair.

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 Mrs M's complaint shouldn't be upheld but for these reasons:

- Mrs M made payments to the holiday company of £1,165 in each of March, April and May 2017 using her Lloyds Bank credit card and her claim to Lloyds Bank was made under section 75 – 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);
- Mrs M's claim under section 75 is that the holiday ownership product was misrepresented to her and her husband and that they wouldn't have bought it if it hadn't been misrepresented to them;
- I'm not determining the outcome of that claim in this decision as only a court would be able to do that but I'm considering whether or not Lloyds Bank's response to Mrs M's claim was fair and reasonable in the circumstances;
- Mrs M's representative's June 2020 letter to Lloyds Bank described the misrepresentations that it says were made to Mrs M and her husband by the holiday company, including that:
 - they didn't realise that the contractual documentation states that they purchased a floating week timeshare and not a specified apartment for a fixed week in the year (which has been found to be null and void under EU directive);
 - they were led to believe that booking their holidays was a simple task but they faced great difficulty in finding availability for their holidays as there was never any availability during the school holidays;
 - they wanted to exchange the timeshare to another resort but couldn't get the right resort as the number of points they had was too low and that was never explained to them;
 - they've never been able to use the timeshare as they couldn't get any booking despite being told that there were "*unlimited getaways*"; and
 - the holiday company didn't highlight the perpetuity contract which meant that the ongoing liability for maintenance fees would be transferred to Mrs M's and her husband's children;
- it's clear the Mrs M and her husband entered into a holiday ownership purchase agreement with the holiday company in February 2017 but I've not been provided with a copy of that agreement – I have been provided with unsigned copies of an

assurance checklist, the loan document, an addendum to the general terms of the holiday ownership purchase agreement and a standard information form;

- Mrs M's representative has described the misrepresentations that it says were made to Mrs M and her husband by the holiday company but no detailed description of the conversations or circumstances in which the alleged misrepresentations were made has been provided;
- the assurance checklist says: *"Subject to payment of the full Purchase Price, I/we own a floating week"*; and floating week has been highlighted and marked with a question mark – and the standard information form says: *"The exact occupancy rights which Seller proposes to transfer to consumer are 1 week(s) in a 2 Bed Townhouse during the Gold season"*;
- I've seen no evidence to show it would have been reasonable for Mrs M and her husband to understand that they were buying a fixed week and I'm not persuaded that there's enough evidence to show that the holiday company misrepresented to them that they were buying a fixed week – nor am I persuaded that a floating week holiday ownership product is prohibited under any EU directive or that it causes the purchase agreement to be null and void;
- Mrs M's representative says that Mrs M and her husband were led to believe that booking their holidays was a simple task but there was never any availability during the school holidays so they've never been able to use the timeshare – but a townhouse was to be available to them during *"gold season"* and I've not been provided with any evidence to show the unsuccessful attempts that they made to book accommodation or that no holidays were available for them;
- Mrs M's representative has provided an owner options document on which handwritten notes have been made, including *"unlimited getaways"*, but I'm not persuaded that it's likely that the holiday company would have said that their purchase would entitle to them to unlimited holidays or that the notes are enough to show that the product was misrepresented to them;
- Mrs M's representative says that Mrs M and her husband wanted to exchange the timeshare to another resort but couldn't get the right resort as the number of points they had was too low and that was never explained to them – any such exchange would only have been possible after Mrs M and her husband had entered into the purchase agreement so I don't consider that they would have been induced into entering into the purchase agreement by any such misrepresentation;
- I'm not persuaded that there's enough evidence to show that Mrs M and her husband had bought a points membership or that the holiday company misrepresented to them what they would be able to use their holiday ownership product for;
- Mrs M's representative says that the holiday company didn't highlight the perpetuity contract which meant that the ongoing liability for maintenance fees would be transferred to Mrs M's and her husband's children – but the standard information form says that the period in which the holiday ownership right may be exercised will terminate in 2082 – so I don't consider that the contract was made in perpetuity or that their liability for management fees would continue in perpetuity;
- I'm not persuaded that there's enough evidence to show that the holiday ownership product was misrepresented to Mrs M and her husband by the holiday company or that they were induced into entering into the holiday ownership purchase agreement by any such misrepresentations;
- Mrs M's representative says that the holiday company breached the contract and regulations (including a European directive, Spanish law and the Unfair Terms in

Consumer Contract Regulations 1999) and that the breaches of statute and regulations made the purchase agreement and Mrs M's payment using her Lloyds Bank credit card null and void – it also says that the holiday company has breached the Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010;

- I consider it to be clear from the documentation that I've seen that the holiday company is not a British or Spanish company and that the holiday ownership product is not in the United Kingdom or Spain so I don't consider that the Unfair Terms in Consumer Contract Regulations 1999, the Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010 or Spanish law would apply to Mrs M and her husband's purchase of the holiday ownership product;
- I'm not persuaded that there's enough evidence to show that there's been a breach of contract or of any applicable directive or regulation in these circumstances and, if there had been a breach of any applicable directive or regulation, I'm not persuaded that it would be a breach of contract for which Lloyds Bank would be liable under section 75;
- nor am I persuaded that the purchase agreement is null and void (as claimed by Mrs M's representative);
- Mrs M chose to use her existing credit card with Lloyds Bank to make payments to the holiday company and I'm not persuaded that there's enough evidence to show that there's been a breach of a duty of care by Lloyds Bank or that those payments, or her credit card agreement with Lloyds Bank, are null and void (as also claimed by her representative);
- our investigator also considered Mrs M's claim under section 140A but I consider it to be clear from Mrs M's representative's June 2020 letter to Lloyds Bank that Mrs M's claim was made under section 75 and that no claim was made under section 140A;
- Mrs M's representative's May 2022 and September 2023 letters in response to our investigator's recommendation referred to section 140A and an unfair relationship between Mrs M and Lloyds Bank but I don't consider that Mrs M has made a claim to Lloyds Bank under section 140A so I can't consider a claim under section 140A in this decision;
- if Mrs M wants to make a claim under section 140A about her relationship with Lloyds Bank being unfair, she should first make a claim to Lloyds Bank and then, if she's not satisfied with its response, she may be able to make a complaint to this service;
- Mrs M's representative says that Mrs M's claim shares the same characteristics as the cases that were subject to the judicial review to which it has referred – but the reviewed complaints concern fractional ownership products and I'm satisfied that the holiday ownership product that was purchased by Mrs M and her husband isn't a fractional ownership product – the reviewed complaints found that a court would likely conclude that the relationship between the debtor and creditor was unfair under section 140A but I've already said that I don't consider that Mrs M has made a claim to Lloyds Bank under section 140A;
- Lloyds Bank says that it didn't receive the June 2020 letter from Mrs M's representative, and it didn't respond to that letter, so I can't say that its response to her claim was fair or reasonable – but when it was contacted by this service about the claim it said that it didn't agree that Mrs M had proven a breach of contract or misrepresentation by the holiday company and I consider that it was fair and reasonable at that time for it not to have upheld Mrs M's claim;
- I sympathise with Mrs M and her husband for the issues that they've had with their holiday ownership product but I don't consider that Lloyds Bank has acted incorrectly

in connection with the payments that Mrs M made to the holiday company using her Lloyds Bank credit card; and

- I find that it wouldn't be fair or reasonable in these circumstances for me to require Lloyds Bank to refund to Mrs M any of the money that she paid for the holiday ownership product, to pay her any compensation or to take any other action in response to her complaint.

My final decision

My decision is that I don't uphold Mrs M's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 3 August 2023.

Jarrold Hastings
Ombudsman