

The complaint

Mr B complains that National Westminster Bank Plc didn't fairly or reasonably deal with his claims under Sections 75 and 140A of the Consumer Credit Act 1974 (CCA) in relation to holiday products he purchased.

The claim, which is the subject of this complaint, is Mr B's, because it relates to a credit card in his sole name. But as the holiday product was in Mr and Mrs B's name, I'll refer to Mr and Mrs B throughout much of this decision.

What happened

Mr and Mrs B purchased membership of a holiday club from a third party (the 'Supplier') in 2003 (the 'Time of Sale'). The purchase price was £11,600 and they say they paid the 10% deposit using Mr B's credit card with the remainder being paid by a CHAPS payment from their bank account.

Mr and Mrs B upgraded their membership in 2004 and 2007. They say the upgrades were paid for using their existing membership and through CHAPS payments. As the only payment made from Mr B's credit card was in regard to the 2003 purchase my decision is in regard to this only.

Mr and Mrs B were unhappy with what happened at the time the holiday product was sold to them. In July 2018, Mr B - using a professional representative (PR) - made claims for misrepresentation and an unfair relationship under Sections 75 and 140A of the CCA. There were several reasons given for the claims which can be summarised as follows:

Section 75: Misrepresentation and breach of contract

- Mr and Mrs B say they were induced into the agreements by a series of misrepresentations by the supplier.
- Mr and Mrs B were led to believe they would be able to easily sell their holiday product if they no longer wanted it, but this wasn't true.
- Mr and Mrs B were led to believe that membership was tailor-made to their needs and requirements. This turned out to be untrue.
- Many of the original facilities provided at the resort were removed or changed.

Section 140A: Unfair Relationship

- Mr and Mrs B were pressured to purchase the membership on the day and when they requested more time were told the offer was only available that day.
- The sale of membership failed to comply with Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010.

- Mr and Mrs B were given inaccurate information about the product and its utility.
- The supplier failed to ensure compliance and due diligence.
- The supplier failed in his duty of care towards Mr and Mrs B.
- The proper assessment of the fitness and propriety of Mr and Mrs B for the holiday products didn't take place.
- The supplier failed to disclose to Mr and Mrs B that, although they were members, they had no voting rights, which allowed the supplier to vote against any future agreed sale.
- The purchase agreement entered into by Mr and Mrs B was perpetual – which was in contravention of Spanish Law.

Mr B asked NatWest to refund the cost of his and Mrs B's holiday product purchases.

NatWest investigated Mr B's Section 75 claim but concluded that it didn't need to issue a refund. It said that there was no clear evidence for a breach of contract or misrepresentation. It further noted that the claim was made more than six years after the alleged misrepresentation occurred and so the claim was out of time under the relevant provisions of the Limitation Act 1980 (the 'LA'). NatWest didn't comment on the claim under Section 140A.

Mr and Mrs B raised a complaint and as this wasn't resolved to their satisfaction, they referred their complaint to the Financial Ombudsman service.

Our investigator issued a view in April 2022. They concluded that:

- The Section 75 claim for misrepresentation was made out of time under the LA in regard to the 2003 purchase.
- The Section 140A claim was made out of time under the LA in regard to the 2003 purchase.
- As an existing credit card had been used to help pay for the purchase the lending hadn't been made irresponsibly.
- The upgrades Mr and Mrs B acquired in 2004 and 2007, were paid for through a combination of the value of the existing membership and bank transfers. So, there was no basis on which Section 75 and 140A claims could be made.

Because of this, our investigator didn't think NatWest was wrong to decline Mr B's request for refunds under the CCA.

Mr and Mrs B didn't agree with our investigator's view. As a resolution couldn't be agreed, this complaint was passed to me, an ombudsman, to decide.

My provisional conclusions

I issued a provisional decision on this complaint the contents of which are set out below.

In this case we haven't received evidence of the payment made using Mr B's credit card in 2003. However, NatWest hasn't disputed that Mr B can make Section 75 and 140A claims

despite the only evidence of the transaction being Mr B's recollection; and 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 think NatWest has a defence to the claims made by Mr B under the LA.

- **Section 75: Misrepresentation**

When a consumer has a claim for misrepresentation against a supplier, they can, in certain circumstances, make a "like" claim against their lender under section 75 of the CCA. The claim against the lender effectively mirrors the claim the consumer could make against the supplier provided it's made inside the relevant limitation period.

But a section 75 claim is "an action to recover any sum by virtue of any enactment" under section 9 of the Limitation Act 1980. And the limitation period under that provision is six years from the date on which the cause of action accrued.

Only a court can decide whether Mr B's claim was made out of time under the Limitation Act 1980. But the Act's still relevant here, as I need to take it into account in deciding whether NatWest's response to the claim was reasonable.

The date on which the 'cause of action' accrued is the point at which Mr and Mrs B entered into the purchase agreement. I say this because they entered into the agreement based on the alleged misrepresentation by the Supplier – which they relied on. And as Mr B has said he used his NatWest credit card to help pay for the purchase, it was when he used his credit card that he suffered the loss.

It follows therefore that I think the cause of action accrued in 2003 when Mr and Mrs B made their purchase, and this means that this claim had to be made within six years of that date. As the claim wasn't made until July 2018, I think it's likely to have fallen outside of the time limit set out in the LA.

- **Section 140A: Unfair Relationship**

Only a court has the power to decide whether the relationship between Mr B and NatWest was unfair for the purpose of Section 140A. But, as its relevant law, I have considered it here.

A claim under Section 140A is a claim for a sum recoverable by statute – which is governed by section 9 of the LA. So, the time limit for making a claim is six years from the date when the cause of action accrued.

Based on the relevant case law, it can be argued that the limitation period in regard to any unfair relationship can start when the credit relating to the related agreement has been paid off, rather than when the relevant credit agreement is formally brought to an end and the entire debtor-credit relationship ends. That said, consideration also needs to be given to whether there are continuing financial detriments and/or ongoing contractual obligations that continue to render the debtor-creditor relationship unfair.

In this case, Mr B has said he made the payment on his credit card in 2003. I have been provided with very limited information in regard to the 2003 purchase. Information has been sent showing ongoing management fees, but it isn't clear these are linked to the 2003 purchase noting specifically that Mr and Mrs B have said they upgraded their membership in 2004 and 2007. In light of the limited information available I do not find I have evidence that there was any ongoing unfairness arising from the 2003 purchase.

As a result, once Mr B settled his outstanding balance paid on his credit card, I think it's unlikely a court would likely find that the relationship between him and NatWest was unfair after that date as a result of the 2003 purchase. I haven't received statements from the time of acquisition with the earliest statements being provided from 2007. These show that Mr B was clearing his credit card balance every month. Therefore, while I cannot say when the payment was cleared, as evidence shows this had happened by 2007 (and is likely to have happened much sooner) I find that this was more than six years before Mr B raised his claim.

Mr and Mrs B have also referred to commission being paid and that this was unfair. But as I have nothing to show there was an arrangement for commission to be paid between the Supplier and NatWest as the credit card provider, I cannot consider this aspect of their complaint.

For the reasons set out above, I think NatWest is likely to be entitled to rely on the LA as a defence to Mr B's claim given its timing. Mr B is asking for a refund based on a payment he made with his credit card in 2003 and as the claim wasn't raised until 2018, I think it is likely to have been made out of time.

- **Section 75: Breach of contract**

Mr and Mrs B have said that many of the original facilities provided at the resort were removed or changed. This could be considered as a breach of contract and the timeframe for this would be when the breach occurred. However, in this case I haven't been provided with any details of the facilities that were moved or changed, nor the timing of this or the evidence from the contract that support this constituting a breach. Therefore, I do not have evidence to uphold this part of Mr and Mrs B's complaint.

- **Irresponsible lending**

It was alleged that the proper assessment of the fitness and propriety of Mr and Mrs B for the holiday products wasn't undertaken. I have taken this to include the allegation that proper affordability checks didn't take place. While I note this comment, neither Mr nor Mrs B were lent to at the time of the purchases. Instead, Mr B used an existing credit card with an existing line of credit, granted to him prior to the acquisition. He used this to part pay for the 2003 acquisition. As there was no new lending decision by NatWest at the time of the acquisition I do not find that it was required to undertake and further checks at the point of purchase.

- **Perpetual purchase agreement**

It is alleged that the purchase agreement was perpetual and in contravention of Spanish Law. However, I do not have the purchase agreement from 2003 or other related documents and so I haven't seen anything to persuade me that the purchase agreement was perpetual or governed by Spanish law.

Neither party provided any further evidence in response to my provisional decision.

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 doing that, I'm required to take into account the relevant law and regulations; regulator's rules, guidance and standards; and codes of practice and what I consider to have been good industry practice at the time.

When evidence is incomplete, inconclusive or contradictory, I've made my decision on the balance of probabilities – that is, what I think is more likely than not to have happened given the available evidence and wider circumstances.

In this case Mr B has raised claims under Sections 75 and 140A of the CCA. Ultimately, it is for the courts to decide whether or not Mr B's claims have expired under the LA. But, as far as I can see from the information available, such claims against NatWest are likely to have been made outside of the relevant time limit set out in the LA. And noting the lending was provided on an existing credit card, I do not find I have evidence to say the lending for this acquisition was irresponsible. Because of this, I'm not persuaded that NatWest needs to do anything to put things right in this complaint.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 4 April 2023.

Jane Archer
Ombudsman