

The complaint

Mr D complains that Bank of Scotland Plc (BoS) didn't fairly or reasonably deal with his claims under Sections 75 and 140A of the Consumer Credit Act 1974 (CCA) in relation to a holiday product purchased in 1996.

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

What happened

Mr and Mrs D purchased a timeshare membership from a third party (the 'Supplier') in May 1996 using Mr D's BoS credit card.

Mr and Mrs D were unhappy with what happened at the time the holiday products were sold to them. In April 2018, Mr D - 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

Mr and Mrs D say they were induced into the agreements by a series of misrepresentations by the supplier:

- Mr and Mrs D were led to believe that the purchase would be an investment that would not lose value and would yield significant returns when sold in the future.
- The timeshare could be exchanged for different resorts anywhere else in the world.
- Mr and Mrs D were led to believe that their membership was exclusive and that they would be guaranteed cheap holidays, but they struggled to book holidays due to lack of availability and found that non-members could also book holidays.

Section 140A: Unfair Relationship

- Mr and Mrs D were pressured to purchase the membership. They say they were made to believe that they needed to make the purchase on the day due to the price offered being limited and paid the deposit on the day and signed up to a mortgage for the remainder of the payments. They say there weren't given a cooling off period.
- The sale of membership failed to comply with Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010.
- Mr and Mrs D 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 D.
- Mr and Mrs D were unaware that the timeshare was being sold in perpetuity and that their son would be liable for maintenance fees in the event of their deaths.
- Mr and Mrs D were not told that annual maintenance fees would rise at the rate they have done.

In response, BoS said it hadn't been provided with sufficient evidence to support a claim of misrepresentation or breach of contract.

Unhappy with BoS' answer to the claims, Mr and Mrs D raised a complaint. As the matter was unable to be resolved, the complaint was referred to the Financial Ombudsman Service.

Our adjudicator issued a view in February 2021. She concluded that:

- The Section 75 claim for misrepresentation was made out of time under the the Limitation Act 1980 (LA).
- The Section 140A claim was made out of time under the LA.

Because of this, our adjudicator didn't think BoS was wrong to decline Mr D's request for refunds under the CCA.

Mr and Mrs D didn't agree with our investigator's view.

My provisional conclusions

I issued a provisional decision on this complaint. The conclusions I reached in my provisional decision are set out below:

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 LA. 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 and Mrs D's claim was made out of time under the LA. But the Act's still relevant here, as I need to take it into account in deciding whether BoS' response to the claim was reasonable.

The date on which the 'cause of action' accrued is the point at which Mr and Mrs D 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 D used his BoS 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 1996 when Mr and Mrs D made their purchase, and this means that Mr D's claim for misrepresentation under Section 75 had

to be made within six years of that date. As the claim wasn't made until 2018, I think it's likely to have fallen outside of the time limit set out in the LA.

Section 75: Breach of contract

The initial letter of claim by Mr D's representative said that "facilities and amenities promised to Mr and Mrs D as part of their ownership were not provided as phase two remained a building site while members holidayed there. This meant that certain facilities had to be shared with phase one which cause inconvenience and overcrowding". The letter also said that Mr and Mrs D had discovered that the resort they could holiday at had been downgraded below a rating called "Gold Crown" due to the ongoing construction work.

On my reading of this complaint, this strikes me as an allegation of breach of contract. However, very little else appears to have been said and/or provided in relation to this allegation. So, as things currently stand, I don't know what Mr and Mrs D's current position is under the relevant purchase agreement. And without knowing more about the specific rights Mr D thinks he and Mrs D lost, I can't say that there's been a breach of contract that BoS is likely to be jointly liable for.

Section 140A: Unfair Relationship

In this case, Mr D has said that he believes his credit card account was closed in 2005. Sections 140A to D of the Consumer Credit Act 1974 came into force on 6 April 2007, following the Consumer Credit Act 2006. Unless the credit agreement started on or after 6 April 2007; or started before 6 April 2007 and was still running on or after 6 April 2008, Section 140A won't apply to it. Therefore, in this case, based on when Mr D has said his credit card account was closed, I do not think Section 140A applies.

The Limitation Act 1980

For the reasons set out above, I think BoS is entitled to rely on the LA as a defence to Mr D's Section 75 claim given its timing. And in light of what I've said about his claim under Section 140A, I don't think BoS has to do anything to put things right in this complaint.

Based on my conclusions I said in my provisional decision that I didn't intend to uphold this complaint.

BoS agreed with my provisional decision and I didn't receive any further information from Mr D.

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.

As I set out in my provisional decision, I think a claim under Section 75 of the CCA in regard to misrepresentation is likely to fall outside of the time limits set out in the LA and I do not

find I have enough evidence to say that the complaint in regard to a breach of contract should be upheld. In regard to a claim under section 140A of the CCA, given the timing of when Mr D's credit card account was closed and when the relevant legislation came into force. I do not think it applies in this case.

I provided my reasoning for the above conclusions in my provisional decision and this is set out above. As I didn't receive any new information in response to my provisional decision, my conclusions haven't changed, and I think BoS is entitled to rely on the LA as a defence to Mr D's Section 75 claim given its timing. And in light of what I've said about his claim under Section 140A, I don't think BoS has 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 D to accept or reject my decision before 17 April 2023.

Jane Archer
Ombudsman