

The complaint

Mr B complains that Bank of Scotland plc trading as Halifax didn't fairly or reasonably deal with his claim under Sections 75 and 140A of the Consumer Credit Act 1974 (CCA) in relation to holiday products he purchased, with his wife, in 2002.

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 products were in Mr and Mrs B's name, I'll refer to Mr and Mrs B throughout much of this decision.

What happened

Mr B and Mrs B acquired timeshares from a third party (the 'Supplier') in 2002. They immediately listed these for resale. In July 2003, the timeshares hadn't been sold and so they returned to the resort to discuss their options. Mr B says he visited the Supplier to resolve the issue but was told he would need to trade in the timeshare apartments for a larger apartment that would be a greater investment and have a greater chance of selling quickly. Mr B did this and then listed the timeshare in the larger apartment for resale on the same day.

Mr B says that in 2019, the Supplier was closed down and he lost the value of his investment which he stated was £18,824. Mr B raised a claim under Section 75 of the CCA for the full amount of his investment saying that that closure of the Supplier was a breach of contract.

In response to Mr B's claim, Halifax said that Mr B had explained the initial fraud happened in 2002 and it said he had six years from that date to raise his claim. It said the claim was raised out of time.

Mr B didn't accept Halifax's response. He engaged a third party to assist with his claim which was referred to the Financial Ombudsman Service in January 2021.

Our investigator set out the timeframe for complaints the Financial Ombudsman Service can consider and noted the complaint being investigated was how Halifax had responded to Mr B's Section 75 claim. As the claim was raised in 2020, our investigator said Mr B's complaint fell within our timeframe of complaints the Financial Ombudsman Service can consider.

Our investigator noted the claim for misrepresentation and breach of contract under Section 75. She noted the time limits set out in the Limitation Act 1980 (LA) and thought Mr B's claim fell outside of the six-year timeframe. Therefore, she didn't think that Halifax was wrong to not consider Mr B's Section 75 claim further based on the timings involved.

Our investigator also considered Section 140A of the CCA and thought a claim under this section would be outside of the time limits under the LA.

Mr B didn't agree with our investigator's view. He said the breach occurred in 2019 when the Supplier was closed, and he suffered his loss. He said he hadn't raised a claim under Section 140A of the CCA.

My provisional conclusions

I issued a provisional decision on this complaint. My findings are set out below.

Mr B has said that timeshares were purchased as investments rather than to make use of the holidays the timeshares offered. A copy of the completion statement for the timeshares in the first three apartments is dated 7 August 2002 and the listing for resale of the timeshares in the same three apartments is also dated 7 August 2002. Mr B has said that as the timeshares weren't sold, he revisited the Supplier in 2003 and was told to trade in the original timeshares for a timeshare in a larger apartment. The purchase agreement for the timeshare in the larger apartment is registered in Mr and Mrs B's names and dated July 2003 and a resale agreement for the timeshare was signed on the same day.

Mr B raised a claim under Section 75 of the CCA in 2020. My decision is whether Halifax acted reasonably and fairly in response to this claim. As Mr B's complaint about how his Section 75 claim was handled was raised in 2021 this falls within the timeframes of complaints the Financial Ombudsman can consider.

Was the right arrangement in place?

Under Section 75 of the CCA, a "debtor-creditor-supplier agreement" is a precondition to a claim under that provision.

Mr B has said he paid the deposit for the timeshare using his Halifax credit card. Mr B has provided evidence of the payments he made using his credit card in 2002 which were for the original purchase agreement (for the three apartments) however no evidence has been provided to show the details of the credit card payment in 2003. The purchase agreement does refer to the deposit payments being made by card, but I have no further details. Therefore, it isn't clear that the required debtor-creditor-supplier agreement is in place.

However, I don't think it's necessary to make a formal finding on the debtor-creditor-supplier agreement for the purpose of this decision because I think Halifax has a defence to Mr B's Section 75 claim for misrepresentation under the LA and I do not think his claim for a breach of contract should be upheld.

Section 75: Misrepresentation

Mr B's main complaint is that there was a breach of contract due to the Supplier no longer operating, and I will deal with this below. However, in the letter from his professional representative it is also claimed that the timeshares were misrepresented as Mr B was led to believe they would be able to be sold quickly as an investment.

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 B'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 Halifax'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 agreements. I say this because they entered into the agreements based on the alleged misrepresentation by the Supplier – which they relied on. And, on the basis that Mr B used his Halifax 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 in regard to the first purchase accrued in 2002 and in 2003 for the second purchase, and this means that Mr B's claim for misrepresentation under Section 75 had to be made within six years of that date. As the claim wasn't made until 2020, I think it's likely to have fallen outside of the time limit set out in the LA.

Section 75: Breach of contract

Mr B says that he lost his money in 2019 when the Supplier stopped operating. He said this constituted a breach of contract. It has been said through this investigation that the date on which the 'cause of action' accrued was when Mr and Mrs B entered into the purchase agreement. I do not agree with this. Instead, I find that the relevant date is the date of any breach. Therefore, I do not find it reasonable to rely on the LA in regard to this issue raised and have instead considered whether the cessation of operations of the Supplier constituted a breach of contract that Halifax should be held jointly liable for.

Mr B has said he acquired the timeshare as an investment. I can see his actions of putting the timeshare up for resale on the same day as the purchase was completed support his intention of using the timeshare as an investment. However, the purchase agreement sets out that Mr and Mrs B acquired use of a certain property for a specified period. Mr and Mrs B decided to list the property for resale but that was their choice. The resale agreement sets out the term of the resale including that a sale isn't guaranteed. Therefore, I cannot say by not selling Mr and Mrs B's timeshare, a breach of contract has occurred.

As I understand it Mr B was still the owner of the timeshare when the Supplier went into administration. For me to say that this constituted an actionable breach of contract I would need to be convinced that the timeshare product he acquired was no longer available to him following the Supplier ceasing operations. In this case I understand that the holiday products Mr B acquired were still available to him after the liquidation with the facilities being run by a new management company. Therefore, I do not find I can say that the liquidation of the Supplier has resulted in Mr B no longer benefiting from the terms of his purchase agreement. Because of this I do not uphold this part of his complaint.

In conclusion, while I can understand why Mr B is upset by the issues he has experienced in the acquisition and attempts to resell his holiday products, I do not find in this case the evidence supports an uphold.

Mr B responded to my provisional decision. He said:

- The claimant has six years to make a claim from when the product or service doesn't work which he said was from the date when the Supplier went into administration.
- There were several breaches of contract namely:
 1. incorrect information was given,
 2. a deposit was taken on the day in contravention of the law.

- 3. fraudulent misrepresentation occurred as statements were made that were untrue, these were made without believing they were true, and were made recklessly.
- 4. In 1998 it became illegal in Spain to offer any kind of perpetuity clause, making the contract void from the time of signing.
- 5. they were given alcohol before signing the agreement making it void.
- The resort is now run under a website which is not who the agreement was originally with and is no longer exclusive. He said when the Supplier went into administration, they no longer owned with them, meaning they were no longer being able to sell the investment.

Mr B said his dispute is that he bought an investment but due to the situation with the Supplier his investment has been lost.

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, incongruent 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.

Time limit

Mr B said that the six-year time limit is from when the product or service no longer work. As I set out in my provisional decision, when considering a breach of contract the six years starts from when the alleged breach occurred. In this case Mr B has said this was when the Supplier went into administration and so the breach of contract does fall within the time limits which is why I considered the merits of this part of Mr B's complaint.

In regard to misrepresentations made when Mr and Mrs B acquired the holiday products, the six year time limit starts from when the cause of action accrued. In this case the date on which the 'cause of action' accrued is when Mr and Mrs B entered into the purchase agreements, based on the alleged misrepresentation by the Supplier, which was in 2002 and 2003. Therefore, I think Mr B's claim for misrepresentation under Section 75 falls outside of the time limit set out in the LA.

Breaches of contract

Mr B listed various points which he considered to be breaches of contract. Having looked through these, I consider points 1 and 3 to be allegations of misrepresentation rather than breach of contract. As noted above, I think it likely any claim for misrepresentation under Section 75 of the CCA has been made out of time.

The other points that Mr B listed as being breaches of contract, are not relevant in regard to a claim under Section 75 of the CCA which is what this decision considers. Instead, they could be considered as part of an assessment to whether the agreement contained unfair terms. In Mr B's response to our investigator's view, he said he hadn't raised a claim under Section 140A and so I haven't considered this further.

Ongoing situation post Supplier's administration

I understand the point Mr B has made about how his holiday product is now operated and I can appreciate why he feels that he has lost out. But as I set out in my provisional decision for me to say that the administration of the Supplier constituted an actionable breach of contract I would need to be convinced that that timeshare product he acquired was no longer available to him following the Supplier ceasing operations. As the holiday products Mr B acquired were still available to him with the facilities being run by a new management company, I do not find I can say that the liquidation of the Supplier has resulted in Mr B no longer benefiting from the terms of his purchase agreement.

I note the comments about no longer being able to sell the holiday product but as I have previously explained, the holiday product acquired was use of a property and as this is still available I do not find I can say that there has been an actionable breach of contract.

I understand Mr B's strength of feeling on this issue and I am sorry for the experience he has had. But in this case, I do not find I can say the evidence supports Mr B 's claim under Section 75 being upheld and so I do not require Halifax to do anything further.

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 13 July 2023.

Jane Archer
Ombudsman