

The complaint

Mrs P complains that Bank of Scotland plc, trading as Halifax, declined her claim under section 75 of the Consumer Credit Act 1974 in relation to a timeshare disposal service.

What happened

In May 2016 Mrs P and her husband entered into a contract with a third party which I will call "R". Mr and Mrs P had a timeshare which they no longer wanted, and R agreed to dispose of it for them. Mrs P says R also agreed to claim compensation for them, and to include R's own fee in the compensation claim, so that R's service would effectively be free. Mrs P says that she was expecting to receive around £30,000 altogether. She paid R a deposit of about £250 using her Halifax credit card. (The rest of R's fee was more than €6,700, and was paid by other means.)

Two months later, in July 2016 Mr and Mrs P surrendered their timeshare membership to their provider themselves, without R's involvement.

Nearly five years later, in April 2021, Mrs P asked Halifax to refund R's entire fee, relying on section 75 of the Consumer Credit Act. She said she had been tricked by R into accepting its services, but then she had later realised that R was in fact a scam company, because R had never responded to her attempts to contact it, and also by reading about R online. She said that its service had therefore been misrepresented to her, and R had never had any intention of fulfilling its contract. That was why she had disposed of her timeshare herself two months later. She was represented in her section 75 claim by a claims management company (CMC).

Halifax asked the CMC for evidence that supported Mrs P's claim. When none was provided, it declined her claim. It said there was no evidence that R had misrepresented its service, or that it could not or would not have fulfilled its contract, if it had been given more than two months to do it. Halifax said R had given no timeframe in which it had undertaken to dispose of the timeshare. Mr P complained about that decision on his wife's behalf, but Halifax reiterated its stance. The CMC then brought this complaint to our service.

Our investigator did not uphold this complaint. She said there was no evidence that Mrs P had been unable to get in touch with R. She said that if Mrs P had really thought she had been defrauded by a scam company in 2016, then she would not have waited five years to ask Halifax for a refund. She thought two months was not a reasonable timescale in which to expect R to accomplish the disposal of the timeshare, as this can often take up to twelve months. She pointed out that R's contract, which Mr and Mrs S had both signed, did not say that R would claim compensation for them, or that it would try to get its fee back from the timeshare provider. For those reasons, the investigator concluded that Halifax had been entitled to reject Mrs P's claim.

Mrs P then instructed a different CMC to represent her, and it is this second CMC which now represents her in this complaint.

The new CMC challenged the investigator's opinion. It accepted that the written contract did

not say that R would pursue compensation, but it argued that R's salesman had promised it would, and that was a misrepresentation. It pointed out that after Mr and Mrs P had relinquished their timeshare, they had received no acknowledgement of that from R, or any further communication at all, which showed that R had not been working on their case. This meant that how long it would have taken R to dispose of the timeshare if Mr and Mrs P had not done it themselves was moot. It pointed out that dishonest sales practices have been observed in other cases about timeshare cases reviewed by our service. It said that Mr and Mrs P's relinquishment of the timeshare was not legally binding under the law of the relevant jurisdiction, because it had not been notarised; if R had done its job then it would have discovered that and then advised Mr and Mrs P accordingly, so the fact that it had still not contacted them supported their claim that R had done nothing. The CMC asked for an ombudsman's 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.

Having done so, I do not uphold it. I will explain why.

My role in this case is to determine whether Halifax reasonably declined Mrs P's section 75 claim based on the information which was before it at the time. The second CMC's point about the legal validity of the timeshare surrender document Mr and Mrs P signed in 2016 is a new point which Halifax was not asked to consider in 2021, so I don't think Halifax can be expected to have taken it into account.

I am not satisfied that R's salesman really told Mr and Mrs P that R would seek to obtain tens of thousands of pounds in compensation – including its own fees – from the timeshare provider. R's contract, which both Mr and Mrs P signed, is short and easy to read, and it says nothing of the kind. Between that and the fact that Mrs P didn't ask Halifax for a refund until five years later, I am also not convinced that she thought in July 2016 that R had misrepresented its services, or that that was the reason why she and her husband took it upon themselves to relinquish their timeshare membership. Based on that, and also based on the lack of evidence before Halifax in 2021, I think the bank was entitled to be sceptical about the assertion that R had completely stopped communicating with Mr and Mrs P.

A section 75 claim needs to be supported by evidence, but no evidence of R's alleged lack of response to Mrs P's attempts to contact it was provided at the time the claim was made, or in response to the two times when Halifax asked for evidence (in April and in May 2021). Nor was evidence provided to show that she had reported R to the police, or tried to sue R, in 2016. Without evidence, Halifax did not have to just take her at her word.

So I do not think that Halifax treated Mrs P unfairly when it declined her claim.

My final decision

My decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs P to accept or reject my decision before 1 December 2023.

Richard Wood
Ombudsman