

The complaint

Mr N complains that Lloyds Bank plc won't refund to him the money that he paid for a holiday club membership. He's being represented in his complaint by a claims management company.

What happened

Mr N's representative says that: Mr N and his wife had been members of a holiday club since 1998; they bought a five year lifestyle membership from the holiday company in June 2015 for £9,850; and they paid that amount by credit card and bank transfer. Mr N's Lloyds Bank credit card statement shows that he paid €1,837 to the holiday company in June 2015 and that £1,352.03 and a non-sterling transaction fee of £39.88 were charged to his account.

Mr N says that the membership was relinquished in December 2015 and that he engaged a relinquishment company in March 2019 to recover the money that he'd paid to the holiday company. He's made a complaint to this service about the relinquishment company and that complaint has been dealt with separately.

I understand that Mr N's representative made a claim to Lloyds Bank in June 2021 under section 75 of the Consumer Credit Act 1974 about the membership that Mr N and his wife had bought in June 2015. Lloyds Bank said that it didn't receive sufficient evidence to support the claim but that it was then advised by Mr N's representative to cancel the claim.

A complaint was then made to this service and Mr N's complaint form says that the membership was mis-sold to him and his wife under significant pressure using commercially aggressive sales practices and, but for the misrepresentations made to them, they wouldn't have purchased it. It said that Lloyds Bank is jointly and severally liable for any misrepresentations and breaches of contract made by the holiday company under section 75.

Our investigator didn't recommend that Mr N's complaint should be upheld. He wasn't persuaded that there was a misrepresentation at the time of sale and he said that he couldn't safely conclude that there had been a breach of contract for which Lloyds Bank was likely to be jointly liable. He noted that an allegation has been made that the membership was sold under extreme pressure and he said that that type of allegation can only be considered if a claim under section 140A of the Consumer Credit Act had been raised, which it hadn't, so he was unable to investigate that further.

Mr N disagreed with our investigator's recommendation so his representative, on his behalf, asked for this complaint to be considered by an ombudsman. It has provided a further submission which says, in summary and amongst other things, that:

- Mr N and his wife bought the membership as an investment, it's very likely that it was sold as more than a holiday product and the Timeshare Regulations prohibit the holiday company from marketing or selling the membership as an investment;

- the holiday company had a responsibility under the Timeshare Regulations to give Mr N and his wife sufficient information for them to make an informed contractual decision;
- the holiday company misrepresented the membership as something that could be resold easily in the future; and
- the membership's expiration date was 2059 at which stage Mr N would be 110 years old and, during that period, he and his wife would have been responsible for paying maintenance charges and failure to pay them would result in termination of the membership with no refund.

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 Mr N's complaint shouldn't be upheld for these reasons:

- Mr N's claim was made under section 75 which 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);
- Mr N's claim under section 75 is that there's been a breach of contract by the holiday company and that the membership was misrepresented to him and his wife 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 Mr N's claim was fair and reasonable in the circumstances;
- Mr N's complaint form says that Lloyds Bank is jointly and severally liable for any breaches of contract made by the holiday company under section 75 – but I haven't been provided with a copy of the claim letter that Mr N's representative sent to Lloyds Bank in June 2021 and I haven't seen a description of the breaches of contract that have allegedly been made by the holiday company;
- I've not been provided with a copy of the purchase agreement for the membership that Mr N and his wife bought in June 2015 or any of the other documents that I consider it to be likely that they would have signed at that time;
- Mr N's representative's submission in response to our investigator's recommendation says that the holiday company had a responsibility under the Timeshare Regulations to give Mr N and his wife sufficient information for them to make an informed contractual decision;
- neither Mr N nor his representative has identified the information that Mr N and his wife required to make an informed decision regarding the purchase but that wasn't provided to them by the holiday company - and they haven't provided the documentation that would have been provided to them at the time of the purchase - so I'm not persuaded that there's enough evidence to show that there's been a breach of the Timeshare Regulations as alleged;
- Mr N says that the membership was relinquished in December 2015 and I've seen no evidence to show that there was a breach of contract before Mr N and his wife relinquished their membership and I'm not persuaded that there's enough evidence

to show that there's been a breach of contract by the holiday company for which Lloyds Bank would be liable under section 75 in these circumstances;

- Mr N's complaint form also says that the membership was mis-sold to him and his wife and, but for the misrepresentations made to them, they wouldn't have purchased it – and his representative's submission in response to our investigator's recommendation says that Mr N and his wife bought the membership as an investment, it's very likely that it was sold as more than a holiday product, the Timeshare Regulations prohibit the holiday company from marketing or selling the membership as an investment and the holiday company misrepresented the membership as something that could be resold easily in the future;
- neither Mr N nor his representative has provided a detailed account of the circumstances in which the alleged misrepresentations were made, the conversations that took place or the information that was provided to Mr M and his wife before their June 2015 purchase;
- I'm not persuaded that there's enough evidence to show that the holiday company represented to Mr N and his wife that the membership was an investment, that the membership was misrepresented to them by the holiday company or that they were induced into buying the membership by any such misrepresentations;
- nor am I persuaded that there's enough evidence to show that the holiday company marketed and sold the membership as an investment in breach of the Timeshare Regulations;
- Mr N's complaint form says that the membership was sold to him and his wife under significant pressure using commercially aggressive sales practices and his representative's submission in response to our investigator's recommendation says that the membership's expiration date was 2059 at which stage Mr N would be 110 years old and, during that period, he and his wife would have been responsible for paying maintenance charges and failure to pay them would result in termination of the membership with no refund;
- I don't consider that those issues would constitute a breach of contract or misrepresentation as part of Mr N's claim under section 75 – they might be relevant to a claim under section 140A but I've seen no evidence to show that a claim under section 140A has been made to Lloyds Bank so I can't make any finding on Lloyds Bank's response to any such claim;
- I sympathise with Mr N and his wife for the issues that they've had with their membership but I consider that Lloyds Bank's response to the section 75 claim that was made to it was fair and reasonable in the circumstances; and
- I find that it wouldn't be fair or reasonable for me to require Lloyds Bank to refund to Mr N any of the money that he paid for the membership, to pay him any compensation or to take any other action in response to his complaint.

My final decision

My decision is that I don't uphold Mr N's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr N to accept or reject my decision before 6 March 2024.

Jarrold Hastings
Ombudsman