

The complaint

Mrs Z complains that HSBC UK Bank plc won't refund to her the money that she paid for a timeshare interest. She's being represented in her complaint by a claims management company.

What happened

I issued a provisional decision on this complaint in October 2023 in which I described what had happened as follows:

"Mrs Z entered into a contract for purchase and sale to buy a timeshare interest from a holiday company in September 2017. The purchase price of the interest was US\$37,900. Her representative says that she part-exchanged a previous purchase that was given a value of US\$22,745 and that she paid US\$13,655 using her HSBC credit card, but the evidence that's been provided shows that she entered into a promissory note with the holiday company in the amount of US\$13,655 in which she agreed to pay that amount by 120 monthly instalments of US\$203.80. Mrs Z did make a payment to the holiday company using her HSBC credit card in September 2017 for US\$2,090 and £1,605.56, and a non-sterling transaction fee of £48.01, were charged to her account.

Mrs Z's representative, on behalf of Mrs Z, made a claim to HSBC in July 2020 under section 75 of the Consumer Credit Act 1974. It said that the holiday company misrepresented the product to Mrs Z and breached its contract with her by not providing its services with reasonable skill and care and by not providing its services within a reasonable time.

HSBC didn't provide a substantive response to that claim so a complaint was made to this service. Mrs Z's complaint form says that the holiday company was in breach of the contract by misrepresenting the contract to Mrs Z and breaching the EU timeshare directive. HSBC then said that the documents provided show that Mrs Z made payments using her HSBC credit card to the holiday company totalling £8,843.15 but the agreement was for £38,490 and section 75 only applies to claims up to £30,000 so it was unable to review Mrs Z's claim any further.

Our investigator didn't recommend that Mrs Z's complaint should be upheld. She said that the purchase price was in excess of £30,000 which meant that the protections under section 75 didn't apply. She said that she thought that HSBC had fairly investigated Mrs Z's claim and wasn't going to ask that it do anything further to resolve this complaint.

Mrs Z's representative, on behalf of Mrs Z, says that it doesn't agree with our investigator's recommendation and has asked for this complaint to be referred to an ombudsman. It says that Mrs Z's evidence has been given no weight and there are various elements of the contract agreed between Mrs Z and the holiday company that give rise to an unfair bargaining position, under section 140A of the Consumer Credit Act, such as the loss of use of the significant sums paid by Mrs Z in the event

of any default of payment. It also says that other claims brought by those who have purchased from the holiday company are similarly ignored”.

I said in my provisional decision: *“I consider that Mrs Z’s complaint shouldn’t be upheld for these reasons:*

- Mrs Z’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);*
- one of those criteria is that section 75 doesn’t apply to a claim so far as the claim relates to any single item to which the supplier has attached a cash price not exceeding £100 or more than £30,000;*
- HSBC says that the purchase price for the timeshare interest was £38,490 so it was unable to review Mrs Z’s claim any further;*
- the contract for purchase and sale shows that the purchase price for the timeshare interest was US\$37,900 – I’ve looked at the applicable exchange rates from September 2017 and consider that US\$37,900 was less than £30,000 at that time so I consider that Mrs Z’s claim did relate to a single item to which the supplier had attached a cash price of less than £30,000 and I consider that HSBC should have considered her claim under section 75;*
- Mrs Z’s representative says that Mrs Z paid US\$13,655 to the holiday company using her HSBC credit card but the evidence that’s been provided shows that Mrs Z entered into a promissory note with the holiday company in the amount of US\$13,655 in which she agreed to pay that amount by 120 monthly instalments of US\$203.80 and I’ve seen no evidence to show that Mrs Z paid any of the purchase price using her HSBC credit card;*
- Mrs Z did make a payment to the holiday company using her HSBC credit card in September 2017 for US\$2,090 and £1,605.56, and a non-sterling transaction fee of £48.01, were charged to her account – and HSBC says that Mrs Z’s evidence shows that the following amounts were also charged to her HSBC credit card account for payments made to the holiday company: £151.15 and £1,073.96 in May 2018 and £6,012.48 in June 2018; so it says that she’s evidenced payments totalling £8,843.15;*
- I’m not persuaded that there’s enough evidence to show that those payments were made to pay any part of the purchase price that Mrs Z agreed to pay for the timeshare interest – it may be that they were payments under the promissory note but, even if they were, I don’t consider that Mrs Z would then be able to make a section 75 claim to HSBC about a breach of the contract for the purchase and sale of the timeshare interest or that the timeshare interest was misrepresented to her;*
- even if I’m wrong about that and the payments made to the holiday company by Mrs Z using her HSBC credit card were payments towards the purchase price of the timeshare interest, I don’t consider that there’s enough evidence to show that Mrs Z’s complaint should be upheld for the following reasons;*
- Mrs Z’s claim under section 75 is that the timeshare interest was misrepresented to her and that she wouldn’t have bought it if it hadn’t been misrepresented to her and that there’s been a breach of contract by the holiday company;*

- *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 HSBC's response to Mrs Z's claim was fair and reasonable in the circumstances;*
- *Mrs Z's representative's July 2020 letter says that the holiday company breached its contract with Mrs Z by not providing its services with reasonable skill and care and by not providing its services within a reasonable time – and Mrs Z's complaint form says that the holiday company was in breach of the contract by misrepresenting the contract to Mrs Z and breaching the EU timeshare directive;*
- *Mrs Z's representative July 2020 letter also says that Mrs Z was advised that: the package would enable her to purchase an investment, which she could sell at a later date for an amount in excess of the sum paid; and the product was of some substance but it's now clear that it's worthless and has no merit;*
- *the contract for purchase and sale shows that Mrs Z was buying a timeshare interest in a timeshare resort which entitled her to use an assigned unit for a specified week each year – I consider that interest to be of substance and to have worth;*
- *neither Mrs Z nor her representative has provided a detailed account of the circumstances in which she was told that the purchase would be an investment, the conversations that took place or the information that was provided to her and I'm not persuaded that there's enough evidence to show that the holiday company represented to Mrs Z that the purchase would be an investment;*
- *I'm not persuaded that there's enough evidence to show that the timeshare interest was misrepresented to Mr Z by the holiday company or that she was induced into entering into the contract by any such misrepresentations;*
- *the timeshare interest is located outside of the UK and the EU so I'm not persuaded that the EU timeshare directive would apply to Mrs Z's timeshare interest and neither Mrs Z's representative's July 2020 letter nor Mrs Z's complaint form provides any detailed information about the alleged breaches of contract by the holiday company so I'm not persuaded that there's enough evidence to show that there's been a breach of contract in these circumstances;*
- *Mrs Z's representative has said, in response to our investigator's recommendation, that there are various elements of the contract agreed between Mrs Z and the holiday company that give rise to an unfair bargaining position, under section 140A of the Consumer Credit Act, such as the loss of use of the significant sums paid by Mrs Z in the event of any default of payment – but no claim under section 140A was included in the July 2020 letter that was sent to HSBC and no complaint about HSBC's response to such a claim was included in Mrs Z's complaint form so I'm unable to make any finding on such a complaint in this decision;*
- *section 140A gives a court the power, amongst other things, to require a creditor to repay any sum paid by the debtor under a credit agreement if it determines that there's an unfair relationship between the debtor and the creditor – but, even if I was able to make a finding on a claim under section 140A, Mrs Z used her existing credit card to make payments to the holiday company and I don't consider it to be likely that a court would conclude that the relationship between HSBC and Mrs Z arising out of her credit card agreement with it was unfair in these circumstances;*
- *Mrs Z's representative says that other claims brought by those who have purchased from the holiday company are similarly ignored – but this service considers each complaint on its individual merits and it would be for those*

purchasers to make claims to their credit providers about the unfairness of the debtor-creditor relationship if they're entitled to do so;

- HSBC didn't respond to Mrs Z's claim and then I consider that it incorrectly said that it was unable to review her claim so I can't say that its response to her claim was fair or reasonable – but if it had properly considered her section 75 claim I consider that it would have been fair and reasonable for it not to have upheld that claim; and*
- I sympathise with Mrs Z for the issues that she's had with her timeshare interest but I find that it wouldn't be fair or reasonable in these circumstances for me to require HSBC to refund to Mrs Z any of the money that she paid for it, to pay her any compensation or to take any other action in response to her complaint”.*

Subject to any further comments or evidence that I received from any of Mrs Z, her representative and HSBC, my provisional decision was that I didn't intend to uphold this complaint. HSBC says that it has nothing further to add but neither Mrs Z nor her representative has responded 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.

As neither Mrs Z nor her representative has responded to my provisional decision and HSBC says that it has nothing further to add, I see no reason to change the findings that I set out in my provisional decision.

My final decision

My decision is that I don't uphold Mrs Z's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs Z to accept or reject my decision before 9 January 2024.

Jarrold Hastings
Ombudsman