

The complaint

Mr F complains that HSBC UK Bank plc (then trading as John Lewis Finance) won't refund to him the money that he paid to a timeshare relinquishment company. He's being represented in his complaint by a claims management company.

What happened

I issued a provisional decision on this complaint in March 2024 in which I described what had happened as follow:

"Mr F and his wife entered into an accommodation contract with a timeshare relinquishment company in January 2018 for it to provide some holiday accommodation to them and the timeshare relinquishment company confirmed that it would also provide timeshare relinquishment services to them. The total price payable under the accommodation contract was €4,440.92 and Mr F paid €2,220.82 of that amount using his John Lewis Finance credit card – and £1,977.94 and a non-sterling transaction fee of £54.39 were charged to his credit card account. The balance of €2,220.10 was paid by Mr F using another credit card.

Mr F also made a payment of €2,220.17 at the same time to another organisation using his John Lewis Finance credit card and £1,977.36 and a non-sterling transaction fee of £54.38 were charged to his credit card account. Mr F and his wife also made a payment of €5,960 by bank transfer about 30 days later to a third organisation – and £4,340.07 was debited from their bank account.

Mr F's representative, on behalf of Mr F, made a claim to John Lewis Finance under section 75 of the Consumer Credit Act 1974 in April 2023. The representative's letter to John Lewis Finance included a claim that the product was mis-sold to Mr F and his wife by the timeshare relinquishment company, and but for the misrepresentations made to them, they wouldn't have purchased the product.

John Lewis Finance said that it required details of Mr F's dealings with the timeshare relinquishment company to start its investigation and to allow it to determine if any breach of contract or misrepresentation has occurred and assess the potential claim. I've seen no evidence to show that the requested information was provided to John Lewis Finance but Mr F complained to this service.

His complaint form says that: he and his wife were sold the product under significant pressure, contrary to the Consumer Protection from Unfair Trading Regulations; they were pressured under time and commercially aggressive sales practices; the product was mis-sold to them and, but for the misrepresentations made to them, they wouldn't have purchased it; they were pressured into entering into the agreement to purchase the product; the timeshare relinquishment company failed to take such steps as would be reasonable to expect it to take in the interests of fairness; and it misrepresented the product and its benefits and pressured him and his wife into purchasing a product which was unsuitable and failed to provide the advantages promised.

Our investigator recommended that Mr F's complaint should be upheld. She thought that there were misrepresentations made by the timeshare relinquishment company which induced Mr F and his wife to purchase the package and that, if they'd known that they stood little chance of getting any money back from their previous timeshare, they wouldn't have entered into any of the contracts. She said that it seemed that all the contracts were intrinsically linked and were sold as a package. She said that John Lewis Finance and the other credit card provider had equal liability for the claim. She recommended that John Lewis Finance should refund to Mr F the full amount that he paid for the package on his John Lewis Finance credit card and 50% of the bank transfer payment (with interest).

Mr F accepted our investigator's recommendation and John Lewis Finance says that it accepts the recommendation on refunding the payment made to the timeshare relinquishment but it contests refunding the amounts paid to the two other organisations. It says that, if the payments to those other organisations were part of the package, the contracts that Mr F received would've mentioned them. It also says that it can't see the required debtor-creditor-supplier link for a claim under section 75 involving those organisations and there's no evidence that they were part of the package".

Provisional decision

I said in my provisional decision: *"I consider that Mr F's complaint should be partly upheld for these reasons:*

- Mr F and his wife entered into an accommodation contract with the timeshare relinquishment company in January 2018 for it to provide some holiday accommodation to them and the timeshare relinquishment company confirmed that it would provide timeshare relinquishment services to them;*
- the confirmation said: "Please take this as written confirmation [that the timeshare relinquishment company] will instigate a claim on your behalf for the amount of £18,024 (subject to all maintenance payments being up to date and all paperwork in order). All claims will be settled in full directly to yourselves, at which point you will be expected to pay back 20% of the total claim. Therefore the net figure would equate to £14,419.20. Please note, from registering the claim, to having the monies paid into our client account, will take a maximum of 60 days";*
- Mr F's representative's April 2023 letter to John Lewis Finance included a claim under section 75 and says that Mr F and his wife were contacted by the timeshare relinquishment company and were provided with accommodation to discuss its services and they were informed that they would be able to recover the £18,024 that they'd paid for various timeshare schemes but, since the payments were made to it, Mr F and his wife haven't had any contact from it and that Mr F has tried to contact it but there was never any progress;*
- section 75 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 F's claim under section 75 is that the timeshare relinquishment services were misrepresented to him and his wife and that they wouldn't have entered into the accommodation contract if they 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 John Lewis Finance's response to Mr F's claim was fair and reasonable in the circumstances;*
- *Mr F's representatives April 2023 letter to John Lewis Finance says that Mr F and his wife were sold the product under significant pressure, contrary to the Consumer Protection from Unfair Trading Regulations; they were pressured under time and commercially aggressive sales practices; they were pressured into entering into the agreement to purchase the product; the timeshare relinquishment company failed to take such steps as would be reasonable to expect it to take in the interests of fairness; and it pressured Mr F and his wife into purchasing a product which was unsuitable and failed to provide the advantages promised;*
- *I don't consider that any such issues would constitute a breach of contract or misrepresentation by the timeshare relinquishment company for which John Lewis Finance would have any liability under section 75;*
- *I'm not persuaded that it's likely that Mr F and his wife would have entered into the accommodation contract unless the timeshare relinquishment company had said that it would be able to recover for them the money that they'd previously paid for various holiday products;*
- *I've seen no evidence to show that the timeshare relinquishment company provided any timeshare relinquishment services to Mr F and his wife and Mr F's representative says that it arranged the relinquishment of a holiday product for Mr F and his wife in January 2021;*
- *I consider it to be more likely than not that the timeshare relinquishment company misrepresented its services to Mr F and his wife and that they wouldn't have entered into the accommodation contract if those services hadn't been misrepresented to them;*
- *the total price payable under the accommodation contract was €4,440.92 and Mr F paid €2,220.82 of that amount using his John Lewis Finance credit card and £1,977.94 and a non-sterling transaction fee of £54.39 were charged to his credit card account - the balance of €2,220.10 was paid by Mr F using another credit card – Mr F has made a separate claim to that credit card provider and his complaint to this service about its response to his claim is being dealt with separately;*
- *Mr F also made a payment of €2,220.17 at the same time to another organisation using his John Lewis Finance credit card and £1,977.36 and a non-sterling transaction fee of £54.38 were charged to his credit card account with that credit card provider - Mr F and his wife also made a payment of €5,960 by bank transfer about 30 days later to a third organisation and £4,340.07 was debited from their bank account;*
- *Mr F says that he was told that the three organisations were one business and that he had to make separate payments due to their credit limits – but the total price payable under the accommodation contract was €4,440.92 and Mr F hasn't provided any evidence to show why the payments of €2,220.17 and €5,960 were made to the other organisations;*
- *those payments weren't made to the timeshare relinquishment company and I'm not persuaded that there's enough evidence to show that they were paid for the provision of the holiday accommodation to Mr F and his wife or the provision of the timeshare relinquishment services to them;*

- *I find that it wouldn't be fair or reasonable in these circumstances for me to require John Lewis Finance to pay any money to Mr F to reimburse him for all or any part of those two payments;*
- *I consider that John Lewis Finance would be liable under section 75 for the full amount of €4,440.92 that Mr F and his wife paid under the accommodation contract but, in these circumstances, I find that it would be fair and reasonable for it to be liable for the £1,977.94 and the non-sterling transaction fee of £54.39 that were charged to Mr F's John Lewis Finance credit card account; and*
- *I find that it would be fair and reasonable for John Lewis Finance to rework Mr F's credit card account as if the payment of £1,977.94 hadn't been made in January 2018, and - if that puts the account into credit - to pay interest at an annual rate of 8% simple on the credit balance for the periods that the account was in credit and it should also refund the credit balance to Mr F (but if Mr F has repaid the £1,977.94 - or any part of it - to John Lewis Finance but doesn't have a credit balance, to pay interest on the amount that he has repaid at an annual rate of 8% simple from the date of payment until the date of settlement)".*

Subject to any further comments or evidence that I received from any of Mr F, his representative and HSBC Bank, my provisional decision was that I intended to uphold this complaint in part. HSBC Bank hasn't responded to my provisional decision. Mr F's representative asked for some information about the refund that Mr F would receive and that information was provided.

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 none of HSBC Bank, Mr F and his representative has provided any further comments or evidence in response to my provisional decision, I see no reason to change the findings that I set out in my provisional decision.

My final decision

My decision is that I uphold Mr F's complaint in part and order HSBC Bank UK plc to:

1. Rework Mr F's credit card account as if the payment of £1,977.94 hadn't been made in January 2018, and - if that puts the account into credit - to pay interest at an annual rate of 8% simple on the credit balance for the periods that the account was in credit and it should also refund the credit balance to Mr F.
2. If Mr F has repaid the £1,977.94 - or any part of it - to HSBC Bank but doesn't have a credit balance, to pay interest on the amount that he has repaid at an annual rate of 8% simple from the date of payment until the date of settlement.

HM Revenue & Customs requires HSBC Bank to deduct tax from the interest payments referred to above. HSBC Bank must give Mr F a certificate showing how much tax it's deducted if he asks it for one.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 20 June 2024.

Jarrold Hastings
Ombudsman

