

The complaint

Mr S complains that Bank of Scotland plc, trading as Halifax, won't refund to him the money that he paid for some holiday club membership rights.

What happened

Mr S and his wife entered into a contract of sale of membership rights to buy some holiday club membership rights from a holiday company in March 2022. The membership price was US\$33,000, Mr S made a down payment of US\$9,900 using his Halifax credit card and he agreed to make 60 monthly payments of US\$385 to the holiday company using his Halifax credit card.

Mr S contacted the holiday company soon after he returned home about the contract and he then made a claim to Halifax in September 2023 under section 75 of the Consumer Credit Act 1974 but his claim was declined. He then made a complaint to Halifax about its decision to decline his claim but it said that the holiday company hadn't breached the contract that Mr S had signed up for so it declined his complaint.

Mr S wasn't satisfied with its response so he complained to this service. He says that Halifax didn't review all of the information properly, including the e-mail threads which are key to understanding the nature of the holiday company, he hasn't been advised correctly as he provided a detailed chronology to Halifax and it needs to refund to him the money that he paid using his credit card to the holiday company. He says that the product was mis-sold to him and that he's been consistently lied to by the holiday company.

Our investigator didn't recommend that Mr S's complaint should be upheld. She wasn't persuaded that there was a misrepresentation at the time of sale. She said that there wasn't evidence to demonstrate that the holiday company had failed to fulfil one or more of the terms of the contract, or that there had been any financial loss even if it had, so she wasn't persuaded that Halifax had to take any steps to put things right.

Mr S says that he doesn't agree with our investigator's recommendation and wishes to take matters further so I've been asked to issue a decision on his complaint. He says that he raised concerns and queries with this package a matters of weeks after returning home and clear and blatant misrepresentations, and misleading statements, by the holiday company have been dismissed. He says that it has U-turned on clear agreements after months of communication and discussion.

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 S's complaint shouldn't be upheld for these reasons:

- Mr S and his wife signed the contract of sale of membership rights in March 2022 – they also signed a promissory note, documents about their benefits, universal credits promotions and a referral program and a verification statement;

- the membership price was US\$33,000, Mr S made a down payment of US\$9,900 using his Halifax credit card and he agreed in the promissory note to make 60 monthly payments of US\$385 to the holiday company using his Halifax credit card;
- Mr S contacted the holiday company soon after he returned home about the contract and he's provided extensive e-mail correspondence that he exchanged with the holiday company;
- he then made a claim to Halifax in September 2023 under section 75 and he provided a detailed chronology of events but his claim was declined so he complained to Halifax about its decision to decline his claim but it said that the holiday company hadn't breached the contract so it declined his complaint;
- 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 S's claim under section 75 is that the membership rights were misrepresented to him and his wife by the holiday company and that they wouldn't have bought them if they hadn't been misrepresented to them – and I've also considered whether 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 Halifax's response to Mr S's claim was fair and reasonable in the circumstances;
- Mr S says that the product was mis-sold and misrepresented to him and his wife and he's been consistently lied to by the holiday company but I've carefully considered the contract, the other documents that Mr S and his wife signed with the holiday company in March 2022, the e-mail correspondence that Mr S exchanged with the holiday company and the chronology of events that he's provided and I'm not persuaded that there's enough evidence to show that the holiday company misrepresented the membership rights to Mr S and his wife, that they were induced into entering into the contract by any such misrepresentations or that the membership rights were mis-sold to them;
- nor am I persuaded that there's enough evidence to show that there's been a breach of contract by the holiday company for which Halifax would be liable under section 75 in these circumstances;
- Mr S says in the chronology of events that the sale was pressured and he and his wife were given no time to review the documents properly, the details weren't correctly explained and the documents were emailed to them rather than being given to them as hard copies – but those issues wouldn't constitute a breach of contract or misrepresentation by the holiday company for which Halifax would be liable under section 75;
- the chronology of events also says that Mr S and wife were given no cooling-off period – but the applicable law is set out in the contract, the sale didn't take place in the UK or the EU and I've seen no evidence to show that Mr S and his wife were entitled to a cooling-off period that would have given them a right to withdraw from the contract under the applicable law;
- I sympathise with Mr S for the issues that he and his wife have had with their holiday club membership rights and the affect that they've had on his health, including the stress that he's referred to on his complaint form, but I consider that Halifax's response to the claim that had been made to it was fair and reasonable in the circumstances and I'm not persuaded that there's enough evidence to show that

Halifax has acted incorrectly in its dealings with Mr S about the payments that he's made to the holiday company; and

- I find that it wouldn't be fair or reasonable for me to require Halifax to refund to Mr S any of the money that he's paid for the membership rights, 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 S's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 15 April 2024.

Jarrold Hastings
Ombudsman