

The complaint

This is a complaint about a claim under section 75 of the Consumer Credit Act 1974 (“CCA”) which The Royal Bank of Scotland Plc (“RBS”) failed to respond to. The claim was originally brought by Mr L in August 2022.

Mr L has died since the complaint was referred to the Financial Ombudsman Service, and the complaint is being continued on behalf of his estate, by a claims management company (“FA”), with the authority of the estate’s executors.

What happened

Mr L owned a number of timeshares and entered a contract with a company I’ll call “CM” on 18 February 2019, the purpose of which was to “extract” him from or “relinquish” the following timeshares:

- Two weeks at “SP”
- One week at “V”
- Two weeks at “LP”
- Two weeks at “LR”

Under the contract, CM said it would “*engage the services of one of our trusted third party legal partners to extract the above Timeshare ownership.*” The fee for this service was stated to be £20,000. The contract came with a guarantee that CM would have extracted or relinquished the timeshares within 12 months of receipt of payment for the service, or Mr L would get his money back.

Mr L made multiple payments to CM on 18 and 19 February 2019 across his RBS credit card and a debit card attached to his RBS bank account. These were charged in euros and came to 22,400 euros. After conversion to sterling, Mr L paid a total of £19,639.31.

The precise details of what happened after this point are unknown, but by August 2022 FA had contacted RBS on Mr L’s behalf to make a section 75 claim in relation to the contract.

FA alleged CM had conducted a high pressure and aggressive sale which had lasted hours, and which had focused on the claiming of compensation for Mr L, presumably in connection with mis-sale of the timeshares he owned. FA also alleged that CM had falsely represented that Mr L would get all the money he’d paid to CM refunded as part of a compensation claim, and that it had made false statements to Mr L about who would be carrying out the relinquishment process and how long it would take.

It doesn’t appear RBS had responded to FA by March 2023, despite acknowledging its initial email in August 2022, at which point FA referred the matter to the Financial Ombudsman Service. We notified RBS of the complaint later that month.

On 14 April 2023 RBS told us it was making an offer to Mr L as a “gesture of goodwill”. This was an offer of £19,639.31. No investigator had been assigned to Mr L’s case at this point and it was not until August 2023 that one of our investigators became available to look into the matter. She notified FA of the offer, whereupon it was discovered that Mr L had died in June 2023.

After learning that Mr L had died, RBS withdrew its offer, reasoning that its offer had been made to Mr L only and that there was no longer a debtor-creditor-supplier (“DCS”) agreement now that he had died. With the offer withdrawn, our investigator began her investigation, during which she tried to ascertain whether CM had arranged for Mr L’s timeshares to be relinquished. She could see that Mr L had continued to be sent invoices by the LP timeshare all the way up until 2023, suggesting CM had failed to relinquish it.

Our investigator made enquiries via FA, and the following comment came back from one of the executors:

“The timeshare at LP was never given up and is being transferred to a family member and this is the reason that service invoices have been paid. The timeshares at [SP] and LR were relinquished and these matters seem to have been negotiated by FA in 2019. We do not have any paperwork relating to the relinquishment of V although it is my understanding this agreement has ended...recently the family have received calls from “SP” advising that there are service invoices outstanding however they have not provided any evidence of this.”

Our investigator then issued her assessment – she was unconvinced by some of RBS’s explanations for the withdrawal of its offer, but she concluded the complaint should not be upheld in any event, reasoning there wasn’t enough evidence of a breach of contract or misrepresentation by CM, for which Mr L could have held RBS liable under section 75. In particular, it appeared three of the four timeshares had been relinquished, and it was unclear whether it was intended that the LP timeshare, which had not been relinquished, be included in the timeshares to be relinquished.

Mr L’s estate disagreed with our investigator’s findings and asked that an ombudsman review the case. The estate argued that RBS had acted unfairly in withdrawing its offer and its reasons for doing so were not valid.

The case has now been passed to me to decide.

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.

I think it is important firstly to deal with the matter of the withdrawn offer. It’s very unfortunate that RBS chose to withdraw its offer after learning Mr L had died. Like our investigator, I’m unconvinced by the reasoning RBS has given for this, and it is unusual for an offer which has been made to be withdrawn in this way.

However, RBS doesn’t need to have a reason for withdrawing an offer before it has been accepted. My understanding is the offer was made as a gesture of goodwill without any admittance of liability, and had not been accepted by the time it had been withdrawn – so ultimately it wouldn’t be reasonable to compel the bank to pay it. I’ve instead needed to consider whether RBS should have honoured the claim Mr L brought under section 75 of the CCA.

Section 75 of the CCA gives consumers who have financed or part-financed a purchase of

goods or services with a credit card, a right to claim against their credit card provider if they have a claim against the supplier of the goods or services in respect of a breach of contract or misrepresentation, subject to certain technical criteria being met.

One of these criteria is the need for there to be in place the “DCS” agreement I referred to earlier. RBS has suggested this agreement no longer exists following Mr L’s death. Although the DCS agreement can be a complex subject, in practice a DCS agreement will normally exist where the borrower on the credit card account has used their credit card to pay a supplier against whom they have a claim for breach of contract or misrepresentation.

In this case Mr L used his RBS credit card to pay a supplier (CM) who he believed he had a claim against for breach of contract or misrepresentation. So it would appear there was a valid DCS agreement in place at that time. RBS hasn’t articulated how it thinks Mr L’s death may have changed this. In the absence of any evidence to suggest otherwise, I’ve proceeded on the assumption that the right to bring the section 75 claim passed to Mr L’s estate on his death.

The other major technical criterion which must be met is that a claim can only be made in relation to items with a “cash price” of over £100 and no more than £30,000. Mr L’s claim fell within this range, so I’ve gone on to consider whether there’s sufficient evidence of a breach of contract or misrepresentation by CM.

Breach of contract

A breach of contract occurs when one party to the contract fails to honour its express or implied terms. As mentioned earlier in this decision, under the contract CM agreed to “relinquish” four named timeshares within 12 months of Mr L making full payment for the service on 19 February 2019. If CM failed to do this, it agreed to refund all money Mr L had paid.

CM said it would use third parties to relinquish the timeshares. It appears the SP and LR timeshares were relinquished by FA in 2019.¹ I have seen a copy of a letter from the SP timeshare dated 25 October 2019, confirming this timeshare had been cancelled. It’s been said that members of Mr L’s family have received calls recently from parties claiming to be SP, requesting money, but in my view not enough detail has been provided of this to call into question whether the SP timeshare was in fact relinquished or cancelled.

No documentary evidence has been submitted regarding the V timeshare. The executor of Mr L’s estate says it is their understanding the timeshare agreement has ended, so it would appear that this timeshare was relinquished as well.

This leaves the LP timeshare. The executor says this is being transferred to a family member and that it was “never given up”. It wasn’t clear from this why this timeshare was not relinquished or otherwise given up in the 12 months from 19 February 2019. Our investigator theorised that it may not have been intended to be included. Prior to writing this decision I asked our investigator to find out more about the background to this, and in response to her enquiries she received a copy of a letter written by Mr L and dated 9 April 2020.

Mr L’s letter explains the situation with the LP timeshare as follows:

“I should also mention that, as I already informed you, I have decided to retain ownership of

¹ It’s my understanding that CM often passed the work of relinquishing timeshares to FA, via a middleman, so it is possible this is how FA came to be involved, as one of the third parties referred to in the contract between Mr L and CM.

[the LP timeshare] and have paid the maintenance fee for 2020 (receipts enclosed)."

I think it's apparent that Mr L had changed his mind about relinquishing the LP timeshare, which is why this process did not go ahead. I think it is difficult to conclude that CM failed to meet its contractual obligations to Mr L by failing to arrange for the relinquishment of the LP timeshare, given Mr L had requested that it not do so.

I could find no reference to a compensation claim in any of the paperwork or other communications from 2019 to 2020. No mention is made of this in the contract between Mr L and CM. As a result, I've been unable to conclude CM was in breach of any contractual obligation to claim compensation for the alleged mis-selling of Mr L's timeshares. However, I've considered this point further below under the heading of misrepresentation.

Misrepresentation

In the context of Mr L's case, a misrepresentation would be a false statement of fact or law made by CM to him, and which induced him to enter the contract with CM.

There are some evidential problems which make a potential misrepresentation claim less persuasive. As mentioned above, there is no contemporaneous documentary evidence referring to a compensation claim which was to be made or facilitated by CM. There is no direct evidence from Mr L as to what happened in the conversations with CM which led to him entering the contract. It does not appear that any witness statement or similar record was taken, and unfortunately that is no longer possible. I note that FA's submissions on the misrepresentation point are also somewhat generic and lacking in specifics, and I have seen the same wording used in other cases brought by this claims management company. As a result, I'm unable to attach much weight to those submissions.

I'm aware that there are aspects of this scenario which are reminiscent of scams which have been known to target timeshare and holiday club owners and members. However, I think the evidence is just too weak to support a claim that CM made false representations to Mr L which caused him to enter the contract with them.

Overall conclusions

In light of my findings above, although RBS failed to respond to Mr L's section 75 claim in a timely manner, in my view it would not have been liable to honour the claim due to there being insufficient evidence of a breach of contract or misrepresentation by CM. And while the bank's decision to withdraw its goodwill offer is unfortunate, it's not something that I can fairly require it to reinstate.

My final decision

For the reasons explained above, I do not uphold this complaint.

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

Will Culley
Ombudsman