

## **The complaint**

Mrs W complains that Bank of Scotland plc did not accept her claim under section 75 of the Consumer Credit Act 1974 ("section 75") in respect of a timeshare relinquishment agreement. The bank operates in this case under its Halifax brand.

Mrs W has been represented by a claims management business, so any reference to her comments and arguments includes those made on her behalf.

## **What happened**

Mrs W owned a timeshare or holiday club membership with a company, D. She wanted to relinquish it and so, in November 2017, contacted a firm which claimed to specialise in such matters, and which I'll call "S".

Mrs W paid S a total of £9,594 for its services. Of that, she paid £1,439 using her Halifax credit card, the same amount using a credit card from a different provider, and the balance by bank transfer.

Mrs W's agreement with S included:

### **2. What we agree to do for you under this agreement**

- a) We will take all necessary measures to try and release you from your timeshare agreement.*
- b) We will notify you in writing as soon as we have successfully completed the work under the terms of this agreement. This may take up to 12 months.*
- c) We will submit to you our final account for the agreed sum inclusive of VAT labelled as Participation Fee.*
- d) Should we feel it necessary to do so, we may instruct a third party to assist/deal with your release from your timeshare agreement.*
- e) The above is the 'Participation' stage.*
- f) This clause constitutes all the work to be governed and conducted under this Agreement. Any and all previous work carried out in relation to your timeshare relinquishment will be governed by separate agreements, unconnected to or unencumbered by this agreement or any other agreement whatsoever.*

...

### **4. What it will cost?**

- a) Our charges are clearly set out in a written quotation which will be given to you, prior to you signing this agreement. By signing this agreement, you confirm that you will pay our charges upfront, unless agreed otherwise.*
- b) Our charges will constitute of the Participation Fee as defined below, which is payable within 7 (seven) days of you signing this agreement*

*c) The value of this fee will be 70% of the total sum quoted as being payable following your consultation with [S]. This is £6,716.00 (the 'Participation Fee').*

*d) Should we be unable to release you from your timeshare agreement, we will return the Participation Fee to you.*

S did not secure Mrs W's release from her arrangements with D. She was able to do that herself, in March 2019.

In August 2023 Mrs W raised a claim with Halifax under section 75. She said that S had not provided the service it had agreed to provide (or indeed, any meaningful service), and so she was entitled to bring a claim against Halifax.

Halifax initially said that it could not consider Mrs W's claim unless it had written confirmation from the other credit card provider involved that she had not made a similar claim against it. Mrs W referred the matter to this service.

One of our investigators explained to Halifax that it was not necessary for it to have the confirmation it had sought from the other card provider. She recommended that Halifax refund the fees which Mrs W had paid to S, together with interest and a sum in recognition of the inconvenience to which she had been put.

In response, Halifax referred to clause 4 of the agreement and said that its effect was that S had agreed only to refund the Participation Fee, not the full amount paid. The investigator therefore revised her view and recommended that Halifax pay Mrs W £6,716 plus interest. Halifax accepted that recommendation, but Mrs W didn't. She said she had been told that the full fee would be returned and that, since S had done nothing to try to secure relinquishment, it was not fair that it should be paid anything. Mrs W asked that an ombudsman review the case.

### **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.

One effect of section 75 is that, subject to certain conditions, an individual who uses a credit card to pay for goods or services and who has a claim for breach of contract or misrepresentation against the supplier of those goods or services has a like claim against the credit card provider. The necessary relationships between Halifax, S and Mrs W are present in this case, and the transaction falls within the relevant financial parameters.

S did not achieve what it set out to do under its agreement with Mrs S, namely release her from her timeshare agreement. Halifax appears to accept therefore that the effect of section 75 is that it should make a refund in this case. The main issue is whether that should be of the full amount paid by Mrs W or the Participation Fee of £6,716.

In my view, clause 4 of the agreement was clear in saying that, if S could not secure the release of Mrs W from her timeshare agreement, she would receive the sum of £6,716.

I note that Mrs W says she was told something different. Given, however, that the written contract said exactly how much would be returned, I think it unlikely that Mrs S was told something different. Even if I were to take a different view on that point, it would not have been reasonable for her to rely on something which so obviously contradicted the written contract.

It is not for me to say whether Mrs S does in fact have a claim against S. Nor is it for me to decide whether she has a claim against Halifax under section 75. What I must do is decide what I consider to be a fair resolution of Mrs W's complaint about Halifax's decisions on her section 75 claim. In the circumstances, however, I think the offer it has made in line with the investigator's recommendation is reasonable.

### **Putting things right**

Although Halifax has made an offer in line with the investigator's recommendation, I will make a formal award, so that Mrs W can enforce it, should that be necessary.

### **My final decision**

For these reasons, my final decision is that, to resolve Mrs W's complaint in full, Bank of Scotland plc should pay her:

- £6,716;
- Interest at 8% a year simple from 11 August 2023 (when she made her claim) until the date of payment; and
- £100 in recognition of the distress and inconvenience caused by its handling of the claim.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs W to accept or reject my decision before 17 March 2025.

Mike Ingram

**Ombudsman**