

## **The complaint**

Mr S's complaint is, in essence, that Lloyds Bank PLC ('Lloyds') acted unfairly and unreasonably by deciding against paying claims under Section 75 of the CCA.

Although the purchase in question here was bought by Mr and Mrs S, the payment was made on a credit card held in Mr S's name only, and as such he is the only eligible complainant here. However, I shall refer to both Mr and Mrs S where appropriate.

## **What happened**

Mr and Mrs S were existing members of a timeshare arrangement with a timeshare provider (the 'Business A').

On 7 November 2017 and 10 November 2017 Mr and Mrs S signed two contracts with a different timeshare provider (the 'Supplier'). The first contract was for the Supplier to engage with a third-party to provide a timeshare relinquishment service on behalf of Mr and Mrs S to terminate their contract with Business A. The second contract was for the purchase of membership of a new timeshare (the 'Fraction') from the Supplier (the 'Time of Sale'). They entered into an agreement with the Supplier to buy a 1/52<sup>nd</sup> share of a property being developed in Scotland. The combined cost of these two contracts was £18,950. (the 'Purchase Agreement').

In addition to their ownership of it, the Fraction provided Mr and Mrs S the right to occupy the specified property for a designated week every year.

Mr S paid £1,500 towards the total cost on a credit card provided by Lloyds (the 'Credit Agreement'). The remaining balance was paid by bank transfers from two different bank accounts.

Mr S – using a professional representative (the 'PR') – wrote to Lloyds on 30 June 2021 to make a claim under Section 75 of the CCA for misrepresentation and breach of contract. In summary, it said the Supplier had:

- Delayed or refused to provide them with the timeshare product purchased.
- Misrepresented the prospect of the timeshare relinquishment being successful in recovering their monies paid to Business A.
- Misrepresented and exaggerated the benefits of the Fraction.
- Misrepresented the Fraction as a share in property and an investment.
- Misrepresented the timescale for the completion of the building work and for the property to become available.

In response, Lloyds said that Mr S had not provided sufficient information for it to assess the claim. As it did not resolve the claim to Mr S's satisfaction, the PR referred his complaint to the Financial Ombudsman Service where it was considered by an Investigator.

The Investigator thought that Lloyds had received enough information for it to give Mr S a substantive response to his claim, so thought it ought to have considered it fully. In light of

this the Investigator went on to look at whether he thought Lloyds ought to have accepted the claim or not.

And having looked at everything, the Investigator thought that had Lloyds properly considered Mr S's Section 75 claim, it would have been fair for it to reject it. He thought this because he was not, on the basis of the evidence provided, persuaded that there had been a breach of contract, or that there had been an actionable misrepresentation made by the Supplier.

Mr S did not agree with this outcome and asked for the complaint to be considered by an Ombudsman. Mr and Mrs S also said that they had tried to book to stay in the accommodation several times only to have been given lots of reasons why they couldn't, including trouble with planning, builders and setbacks with weather, and then the Covid pandemic. They went on to say the property should have been ready in spring 2018, then summer 2018 then the end of 2018. They said they just wanted what they had paid for and had got nothing in return.

Lloyds reconsidered their Section 75 claim but rejected it. They said that no sufficient evidence had been provided to show the accommodation was unavailable for a prolonged period of time or attempts to book it had not been honoured. The evidence from Mr and Mrs S showed only a small period in which there was building work at the property which a clause in the contract covers, so there had been no breach of contract due to this.

The Investigator again considered everything in light of Mr and Mrs S's submissions, and the review of the claim by Lloyds, but did not change his opinion. He didn't think Lloyd's handling of their Section 75 claim had been unreasonable.

As no informal resolution of the complaint could be achieved, the matter has come to me for a 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.

And having done that, I agree with the findings of the Investigator, for broadly the same reasons. I do not think Lloyds have been unreasonable or unfair in rejecting Mr S's claim under Section 75 of the CCA, so I do not think this complaint should be upheld.

But before I explain why, I want to make it clear that my role as an Ombudsman is not to address every single point that has been made to date. Instead, it is to decide what is fair and reasonable in the circumstances of this complaint. So, if I have not commented on, or referred to, something that either party has said, that does not mean I have not considered it.

What is more, I have made my decision on the balance of probabilities – which means I have based it on what I think is more likely than not to have happened given the available evidence and the wider circumstances.

### **Section 75 of the CCA: the Supplier's misrepresentations at the Time of Sale**

---

The CCA introduced a regime of connected lender liability under Section 75 that affords consumers ("debtors") a right of recourse against lenders that provide the finance for the acquisition of goods or services from third-party merchants ("suppliers") in the event that there is an actionable misrepresentation and/or breach of contract by the supplier.

In short, a claim against the Lender under Section 75 essentially mirrors the claim Mr S could make against the Supplier.

Certain conditions must be met if the protection afforded to consumers is engaged, including, for instance, the cash price of the purchase and the nature of the arrangements between the parties involved in the transaction. The Lender does not dispute that the relevant conditions are met in this complaint. And as I'm satisfied that Section 75 applies, if I find that the Supplier is liable for having misrepresented something to Mr and Mrs S at the Time of Sale, the Lender is also liable.

There were two aspects to the purchase made by Mr and Mrs S – the timeshare relinquishment, and the purchase of the Fraction. So, I need to consider whether I think it likely that there were misrepresentations made by the Supplier in respect of both of these aspects.

As regards the timeshare relinquishment, it has been alleged that the Supplier misrepresented the prospect of the relinquishment being successful in recovering the monies paid by Mr and Mrs S for their timeshare with Business A. However, there is no evidence which leads me to think that the Supplier told Mr and Mrs S that it would, or even could, recover any of the money. Mr and Mrs S have not said anything about what the Supplier told them in this regard. And having considered the contract that Mr and Mrs S entered into with the Supplier, there is no mention of the recovery of any money, just that the Supplier would ask one of its legal teams to have the contract with Business A terminated within 12 months. So, I think it unlikely that the Supplier would have told Mr and Mrs S that it could recover money on their behalf from Business A. As regards the termination, the PR has shown that the contract between Mr and Mrs S and Business A was terminated in April 2018, so within the 12-month period promised.

The Letter of Complaint goes on to say that the benefits of the Fraction, and that the Fraction was a share in property and an investment, were both misrepresented to Mr and Mrs S by the Supplier. But other than the bare allegation in the Letter of Complaint, Mr and Mrs S have not actually said what was said, by whom, and in what context. They haven't said what the Supplier told them about the benefits of ownership, or its investment potential. And in any event, I can see that the Fraction does appear to be a share in property, so I'm not persuaded the Supplier told them anything untrue in this regard.

And as regards the misrepresentation that Mr and Mrs S say the Supplier made over the timescale for the completion of the building work, again, they haven't actually said anything about what they were told or promised by the Supplier in this regard.

So, in relation to the Supplier's alleged pre-contractual misrepresentations, Mr and Mrs S have not persuaded me that there was an actionable misrepresentation by the Supplier at the Time of Sale for the reasons they allege. And there's nothing else on file that persuades me there were any false statements of existing fact made to Mr and Mrs S by the Supplier at the Time of Sale.

For these reasons, therefore, I do not think the Lender is liable to pay Mr S any compensation for the alleged misrepresentations of the Supplier. And with that being the case, I do not think the Lender acted unfairly or unreasonably when it dealt with the Section 75 claim in question.

### **Section 75 of the CCA: the Supplier's breach of contract**

---

I've already summarised how Section 75 of the CCA works and why it gives Mr S a right of recourse against the Lender. So, it isn't necessary to repeat that here other than to say that,

if I find that the Supplier is liable for having breached the Purchase Agreement, the Lender is also liable.

As regards any possible breach of contract relating to the timeshare relinquishment, as I've said above, I can see that Mr and Mrs S's timeshare contract with Business A was indeed terminated within the 12-month period as set out in their contract with the Supplier. So, I do not think there has been a breach of contract here.

But there is another reason, perhaps the main reason, why Mr and Mrs S were dissatisfied with their purchase of the Fraction, and that is because they say they have never been able to use it.

I can see, from an email chain between Mrs S and the Supplier between 28 August 2018 and 27 November 2018 that they were upset about delays to the building work. For example, in the email from Mrs S on 28 August 2018 she says:

*"...Just a quick note to let you know how disappointed we are at not being able to use the accommodation we purchased from you we have been very patient. We have taken advice, we are now asking you to return any monies..."*

The Supplier replied to this on 30 August 2018 as follows:

*"...As we discussed there were a few delays with planning but this was all approved a few months ago and the builders are converting the house as we speak and we expect completion in around 10 weeks. [redacted] solicitors are also working on the transfer of ownership title to all of the new owners and of course the registration in the Scottish land registry..."*

On 16 October 2018 Mrs S sends a further email to the Supplier and expressed their disappointment in having paid for something that they were expecting to use from May/June 2018. She also explains that Mr S's health had deteriorated and they were in debt so having the money back would help a difficult situation, and they would not be in a position to go to Scotland or anywhere anyway.

Other than an acknowledgement, the Supplier did not give a substantive response to this request, so on 27 November 2018 Mrs S wrote:

*"So sorry to have to complain again about having nothing from [the Supplier]. I think we have been very patient so now after more than a year I respectfully ask to have our full money we paid to you returned to us ASAP (£18,950) as it seems we are clearly not out of [Business A] and keep getting threatening letters and phone calls demanding payment<sup>1</sup>."*

So, I can see Mr and Mrs S were disappointed that they'd been unable to use the accommodation as they'd expected, but importantly, I've not seen anything in the contract which says when the accommodation would be completed and available by. And the contract does allow for necessary works to be completed within the accommodation. But in any event, as I've said above, Mr and Mrs S have not said what they were told by the Supplier in the pre-contractual negotiations in this regard.

Overall, therefore, from the evidence I have seen, I do not think the Lender is liable to pay Mr S any compensation for a breach of contract by the Supplier. And with that being the

---

<sup>1</sup> This seems at odds to what the PR has told me in this regard. The PR has shown that Mr and Mrs S's contract with Business A was terminated in April 2018 and has said they received no further correspondence from Business A after that date.

case, I do not think the Lender acted unfairly or unreasonably when it dealt with the Section 75 claim in question.

## **Conclusion**

---

In conclusion, given the facts and circumstances of this complaint, I do not think that the Lender acted unfairly or unreasonably when it dealt with Mr S's Section 75 claims, and having taken everything into account, I see no other reason why it would be fair or reasonable to direct the Lender to compensate him.

## **My final decision**

I do not uphold Mr S's complaint against Lloyds Bank PLC.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 31 March 2025.

Chris Riggs  
**Ombudsman**