

complaint

Mr B, who is represented by a claims management company (CMC) complain that The Royal Bank of Scotland Plc (RBS) rejected their claim under Section 75 Consumer Credit Act 1974 in respect of a holiday club.

background

In June 2015 Mr and Mrs B took out holiday club trial membership with a company I will call D. It cost £3,950 of which £600 was paid using a RBS credit card. The balance was funded by a loan with another provider.

In February 2017 the CMC contacted RBS seeking return of what was described as a useless investment. They said that D had been taken over by another company which had made all the staff redundant. The CMC also said that Mr and Mrs B were unable to book holidays as they were told there was no availability despite holidays being available on the internet.

RBS rejected the claim and said that the payment had been made to an intermediary so the required debtor-creditor-supplier chain had been broken. The CMC disputed this and said D held a share in the intermediary, but the bank maintained its position was right.

The CMC brought Mr B's complaint to this service where it was considered by one of our adjudicators who didn't recommend it be upheld.

He considered the paperwork Mr and Mrs B signed and the sales aids and training used by D which gave some insight into the sales process. He said the aids highlight an imbalance in information, favouring the emotional and tangible benefits of membership. He thought it possible that they may have been slightly unclear about the product they were buying.

However, he hadn't seen sufficient information to suggest the product was described as having unlimited availability, or that it was exclusive to members. Instead, the information seems to suggest members would have to book in advance and holidays would be subject to availability, customers would be shown pictures of some of the resorts in the portfolio and told they may visit some apartments to get a sense of the quality offered by Diamond.

He concluded that although the sales process was constructed to focus on the benefits the product would provide he didn't believe this amounted to misrepresentation.

He also considered if the loan and sale were brought about by selling methods on the part of D that were unfair or misleading. Having done so, I believe it is unlikely a court would conclude that D's actions as an agent of RBS generated an unfair debtor – creditor relationship.

He explained the of a holiday membership by a timeshare supplier is not an activity that this service can investigate directly or in an all-encompassing manner. We are limited to reviewing how the lender responded to the consumer's claim and in doing so, we have to limit our investigation into the protections set out in the CCA which are narrow and require us to consider how a court would weigh up the evidence being presented.

While he empathised with the situation Mr and Mrs B now find themselves in, he thought RBS had fairly investigated the claim. The CMC didn't agree and asked that the matter be considered by an ombudsman.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I have every sympathy with Mr B and his wife, but I find myself in agreement with our adjudicator. I will explain why.

This complaint has been submitted as a claim under section 75 of the Consumer Credit Act 1974. Section 75 offers protection to customers who use certain types of credit to make purchases of goods or services. Under section 75 the consumer has an equal right to claim against the provider of the credit or the retailer providing the goods or services, if there has been a misrepresentation or breach of contract on the supplier's part.

For section 75 to apply, the law effectively says that there has to be a:

- Debtor-creditor-supplier chain to an agreement *and*
- A clear breach of contract or misrepresentation by the supplier in the chain.

RBS has said the required chain is not in place with an intermediary inserted into the transaction. The CMC has said that they were linked with D holding a share in the third company. It is necessary for the two to be associated which requires control to be exercised directly or indirectly. The CMC has not established the two companies were associated, but I have not discounted the possibility that they were.

However, as I consider the claim fails for other reasons, I have not pursued this line any further. To allow me to uphold this complaint I have to be satisfied that there was either misrepresentation or a breach of contract. The CMC has submitted little in the way of evidence in support of its claim.

It seems that the two main points they raise are that D was taken over by another company and Mr and Mrs B found it difficult to book a holiday. I have not been told if they were able to book any holiday, or what efforts they made to book one. The CMC simply asserts without evidence that they can never book holidays. Given the CMC is seeking a significant refund it is not unreasonable to expect it supply some evidence in support of the claim.

As our adjudicator has pointed out the sales pitch stressed the benefits, but it is clear that Mr and Mrs B were informed that holidays would be subject to availability. It may be that the dates which Mr and Mrs B chose were in peak season. But based on what I have seen I cannot conclude that there was either a breach of contract or misrepresentation.

my final decision

My final decision is that I do not uphold this complaint. Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs B to accept or reject my decision before 22 May 2021.

Ivor Graham
Ombudsman