

The complaint

Mr G has complained that Nationwide Building Society ("Nationwide") has unfairly turned down a claim he made under section 75 of the Consumer Credit Act 1974 ("CCA").

What happened

In February 2019, Mr G, along with his wife, travelled to Tenerife and signed up to a number of services from two companies. He partly paid for these using a Nationwide credit card.¹

Later in 2019, Mr G made a claim to Nationwide using the services of a professional representative ("PR"). It set out the background to the claim and said that Mr G was contacted by a company over the phone and invited on a discounted holiday to Tenerife. This was because he was a member of a holiday club that had become insolvent. When there he was told he had to attend a presentation or he would have to pay the full cost of the holiday. At the presentation he was told he would be able to recover everything paid to the insolvent holiday club, but he had to pay £7,500 for that service. He would also get use of a travel agency, as well as a number of other free holidays. The benefits discussed would be provided by two companies that I will call Business T and Business P.

PR said that the offer was fraudulent and Business T and Business P were linked to other businesses that had been exposed as improper on a television programme. In addition, Mr G did not get any of the timeshare compensation promised and he was entitled to make a claim under s.75 CCA. PR also said that Mr G had not used any of the accommodation rights he purchased as they were 'fake' and the phone numbers given were disconnected, and in fact the accommodation was effectively free holidays offered to the general public so they could test accommodation at timeshare resorts.

Nationwide responded to the claim, but said it did not think it needed to pay anything to Mr G. It said the evidence suggested Mr G chose not to take the holidays purchased, rather than there being a breach of contract. It also said it tried the phone numbers given and they managed to get through to someone. Unhappy with Nationwide's response, PR referred Mr G's complaint to our service.

One of our investigators considered the complaint, but did not think there was enough evidence that suggested Nationwide should have accepted the claim. She said it was not possible for her to determine what Mr G was told about the possibility of making a successful claim for compensation arising out of his holiday club. She said that there was not sufficient detail about Mr G's memories of the sale to say what had happened. Our investigator accepted that Mr G bought some accommodation vouchers, but was unable to say that Mr G could not use the accommodation or other benefits bought.

PR responded to say that there was evidence to suggest that Business P had to change its name on a number of occasions, which was concerning behaviour. PR also said that other complaints brought to our service about this business had been upheld. As the parties did

¹ Although many of the services purchased were in the made of Mr and Mrs G, as the card was in Mr G's name, only he is able to bring a complaint to our service. So I have referred to only Mr G throughout.

not accept our investigator's view, the matter was passed 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.

Mr G made a claim to Nationwide under s.75 CCA and, when that claim was declined, referred a complaint to our service. So I have considered whether Nationwide should have looked at his claim differently. In summary, under s.75 CCA, in certain circumstances a lender can be jointly liable for a supplier's breach of contract or misrepresentation, where the lender's credit was used to pay for goods or services. So here, Mr G is asking Nationwide to pay damages for breaches of contract or misrepresentations for which Business P or Business T are responsible.

Whether a lender such as Nationwide can be responsible turns on the legal relationships between the parties. That can be a complex issue and not one I need to consider here. That is because, even if I assume Nationwide could be legally responsible for the actions of Business P or Business T, I do not think there is enough evidence to show any breach of contract or misrepresentation.

I have considered the available documentary evidence alongside what Mr G said happened. Mr G entered into an 'Accommodation Contract' with Business T, which provided four weeks of accommodation. The first week was taken whilst in Tenerife, and the next three weeks were said to have been paid for on the date of the contract. The total price was £3,000.

I have seen a number of documents on Business T headed paper that reference Mr G. There is a letter that says Mr G was entitled to five worldwide holidays, each one being seven nights of accommodation plus two return flights up to the value of £250. The holidays are described as a 'gift' and an opportunity to sample popular worldwide destinations. There is also a letter that records that Mr G had booked two weeks of accommodation through Business T, had taken one week and there was one week remaining. It is also recorded that Business T registered "£4,500" on Mr G's behalf, but it is not clear what this means. Finally, it is recorded that Mr G was happy with the services received as part of a subscription.

There is also a letter from Business P that confirms a fourth week of holiday was booked, so no further weeks remained. Finally, there are several accommodation vouchers, showing the holidays booked.

I have seen a document on Business P headed paper that says Mr G gave permission for Business P to use his credit card for the registration amount of £4,500. There is also a form telling Mr G to make a bank transfer for a much larger amount, but it is not clear who that was to or for what service. I have seen that £4,471.73 was paid to Business P using Mr G's Nationwide credit card.

Having considered everything, it is not clear what Mr G actually paid for. But from the documents I have seen, I think Mr G paid for some accommodation that was arranged or supplied by Business P and/or Business T. PR, on Mr G's behalf, has not been able to say precisely what the terms of the agreement were, so it is difficult to say whether the accommodation has not been supplied and where there has been a breach of contract. However, I have not seen any evidence that Business P and/or Business T went out of business, became insolvent or were unable to offer the accommodation to Mr G. So based on what I have seen, I do not think there is evidence to suggest there was a breach of contract.

PR argued misrepresentations were made to Mr G, which made him sign up to Business P and Business T. But the specific alleged misrepresentations have not been set out in any detail. In particular, it has not been said what Mr G was told about any potential claim he might have against his former holiday club. Nor has it been said what he was told about the accommodation or other services offered that turned out not to be true. So I do not have sufficient evidence to say any misrepresentations were made to Mr G.

PR has said that our service has upheld similar complaints. But I must decide this individual complaint based on the evidence provided. And, for the reasons explained, I simply do not have the evidence to say what, if anything, went wrong.

My final decision

I do not uphold Mr G's complaint against Nationwide Building Society.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 13 July 2023.

Mark Hutchings
Ombudsman