

The complaint

Mr M complains that National Westminster Bank plc won't refund to him the money that he paid for a holiday right. His wife is also involved in his complaint and he's being represented by a claims management company.

What happened

Mr M and his wife entered into a sales contract in July 2017 to purchase the right to use a specified apartment at a specified resort for a specified week of the year. The purchase price payable under the sales contract was £3,750 and Mr M made a payment of £400.05 using his NatWest credit card in July 2017. Mr M's representative says that the balance was payable by instalments and that Mr M and his wife paid a total of £2,617.40 to the holiday company before they ceased making payments after returning from their holiday in 2018.

Mr M's representative made a claim to NatWest in June 2019 under section 75 of the Consumer Credit Act 1974. It said that the holiday company was in breach of the contract and misrepresented the holiday right to Mr M and his wife. NatWest said that the documentation received from Mr M's representative didn't prove that a breach of contract or misrepresentation had occurred so it was unable to consider Mr M's claim and that there had been no bank error in the handling of his claim. Mr M wasn't satisfied with its response so a complaint was made to this service that the holiday company was in breach of the contract by misrepresenting the contract to Mr M and his wife and breaching the EU Timeshare Directive.

Our investigator didn't recommend that Mr M's complaint should be upheld as she didn't think that NatWest's decision to turn down his claim was unfair or unreasonable. She wasn't persuaded that there was a misrepresentation at the time of sale and she didn't think that the holiday company had breached the contract agreed between it and Mr M and his wife. Mr M's representative, on Mr M's behalf, says that it doesn't accept our investigator's recommendation and would like the matter to be referred to an ombudsman for further investigation.

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.

Having done so, I agree with our investigator that Mr M's complaint shouldn't be upheld for these reasons:

- Mr M's claim was made under section 75 which gives a consumer an equal right to claim against the supplier of goods or services or the provider of credit if there's been a breach of contract or misrepresentation by the supplier (provided that certain criteria set out in that section are met);
- Mr M's claim under section 75 is that there's been a breach of contract by the holiday company and that the holiday right was misrepresented to him and his wife and that they wouldn't have bought them if they hadn't been misrepresented to them;

- I'm not determining the outcome of that claim in this decision as only a court would be able to do that but I'm considering whether or not NatWest's response to Mr M's claim was fair and reasonable in the circumstances;
- Mr M's complaint form says that the holiday company was in breach of the contract by misrepresenting the contract to Mr M and his wife, and his representative's letter to NatWest in June 2019 describes the misrepresentations that it says were made to Mr M and his wife, including that:
 - they were advised that the one bedroom apartment would be to the same standard as the two bedroom apartment that they viewed;
 - they were assured that there was evening entertainment and a bar which would be open late at night; and
 - they believed they would be buying into an exclusive membership;

and it says that those promises were untrue;

- Mr M and his wife signed the sales contract which included the terms and conditions in July 2017 and it identified the apartment for which they were purchasing a right to use and said that it was for a maximum of four persons;
- Mr M's representative says that apartment was considerably inferior to the apartment that Mr M and his wife had viewed during their tour of the resort, it only had two single beds and a sofa (which wasn't suitable to sleep on), there was no table to eat from, there was no oven, there was only one wardrobe and the air conditioning was faulty – it also says that Mr M and his wife complained to the holiday company but were told that there was nothing that could be done;
- other than the description of the issues in his representative's claim letter, Mr M hasn't provided any other evidence to support his claim about the issues with the apartment or to show that he and his wife complained to the holiday company about those issues and I'm not persuaded that there's enough evidence to show that the standard of the apartment was misrepresented to them;
- Mr M's representative says that all facilities were closed by 7pm, the resort wasn't suitable for a family and Mr M and his family had to go outside of the resort to find entertainment;
- neither Mr M nor his representative has provided a detailed account of the circumstances in which those alleged misrepresentations were made, the conversations that took place or the information that was provided to them and I'm not persuaded that there's enough evidence to show that the holiday company assured Mr M and his wife that there was evening entertainment and a bar which would be open late at night;
- Mr M's representative says that the resort can be booked by non-members via third party booking agencies and it has provided evidence of that;
- neither Mr M nor his representative has provided a detailed account of the circumstances in which the holiday company told Mr M and his wife that the resort was exclusive to members, the conversations that took place or the information that was provided to them and I'm not persuaded that there's enough evidence to show that the holiday company told them they the resorts were exclusive to members;
- I don't consider that Mr M or his representative has provided enough evidence to show that Mr M and his wife haven't received the holiday right that they purchased under the sales contract that they signed in July 2017 and I'm not persuaded that there's enough evidence to show that the holiday right was misrepresented to them

by the holiday company or that they were induced into entering into the sales contract by any such misrepresentations;

- Mr M's representative's June 2019 letter to NatWest says that the holiday company is in breach of the contract between it and Mr M and his wife and Mr M's complaint form says that the holiday company was in breach of the contract by misrepresenting the contract to Mr M and his wife and breaching the EU Timeshare Directive;
- Mr M's representative says that the contract is illegal as the holiday right lasts for a period in excess of 50 years and there is no fixed accommodation nor a fixed time to use it;
- the sales contract identifies the apartment and week of enjoyment and it says that the duration of the agreement is limited to 50 years (and the terms and conditions says that the sales contract will automatically terminate as of a specified date in December 2048) and I'm not persuaded that there's enough evidence to show that the sales contract is illegal or that there's been a breach of contract by the holiday company in these circumstances;
- Mr M's representative says that the holiday company demanded and accepted a deposit payment on the date that Mr M and his wife signed the sales contract and is in breach of the EU Timeshare Directive and other laws and regulations;
- it's clear that Mr M made a payment of £400.05 using his NatWest credit card on the day that he and his wife signed the sales contract – but the sales contract says that the purchase price was payable by 36 monthly instalments of £117.34 from October 2017;
- there's no reference in the sales contract to a deposit being payable or to a payment of £400.05 and I don't consider that there's enough evidence to show why Mr M made the payment of £400.05 using his NatWest credit card at that time – but I'm not persuaded that there's enough evidence to show that there's been a breach of any applicable EU directive, regulation or law for which NatWest would be liable under section 75 in these circumstances;
- Mr M and his wife had signed the sales contract and agreed that they'd: *"... been informed before signing this Sales Contract of his/her/their right of withdrawal within fourteen (14) calendar days and that no advanced payments or deposit, no guarantees no reservation of monies in accounts, no express acknowledgment of debt or any other consideration in favour of the Seller or a third party shall be accepted during this period"*;
- even if the holiday company had demanded and accepted a deposit payment on the date that Mr M and his wife signed the sales contract in breach of the EU Timeshare Directive, I've seen no evidence to show that Mr M and his wife tried to withdraw from the sales contract within the applicable withdrawal period or that they wouldn't have gone ahead with the purchase if the deposit payment hadn't been made – so I don't consider that any such breach would entitle them to rescind the sales contract or to cause there to be an unfair debtor-creditor relationship;
- NatWest said that the documentation received from Mr M's representative didn't prove that a breach of contract or misrepresentation had occurred so it was unable to consider Mr M's claim and that there had been no bank error in the handling of his claim – I consider that its response to Mr M's section 75 claim was fair and reasonable;
- Mr M's representative says that Mr M and his wife paid a total of £2,617.40 to the holiday company before they ceased making payments after returning from their holiday in 2018; and

- I sympathise with Mr M and his wife for the issues that they've had with the holiday right that they purchased, but I find that it wouldn't be fair or reasonable in these circumstances for me to require NatWest to refund to Mr M any of the money that he paid to the holiday company, to pay him any compensation or to take any other action in response to his complaint.

My final decision

My decision is that I don't uphold Mr M's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 18 October 2023.

Jarrold Hastings
Ombudsman