

The complaint

Mr G has complained about a holiday club membership he bought using his credit card provided by The Co-operative Bank Plc ("The Co-op").

What happened

In 2016, Mr G, alongside his wife, bought membership of a holiday club from an overseas supplier, "LLG" ("the Supplier"). The cost of the membership was partly paid using a credit card provided to Mr G by The Co-op.¹

The following year Mr G made a claim to The Co-op using the help of a professional representative ("PR"). PR argued that the Supplier had misrepresented the membership to Mr G as he wasn't able to book a holiday to the Maldives as he expected. PR also said that the membership wasn't suitable for Mr G as he turned 65 in January 2018 and the terms of membership meant he wasn't able to book holidays after that date – PR say the Supplier misrepresented this to Mr G and said he should simply ignore the terms. It was said that this amounted to something The Co-op were responsible for under s.75 of the Consumer Credit Act 1974 ("the CCA").

The Co-op responded to the claim, but said it didn't think there was enough to say the alleged misrepresentations had been made. It also said that the terms provided by Mr G were in the name of a different business to the Supplier. In response PR explained that the terms were from a business linked to the Supplier, but The Co-op didn't change its position.

Unhappy with what The Co-op said, Mr G referred a complaint to our service that The Co-op hadn't fairly dealt with his claim. The Co-op then reconsidered what Mr G had said. It said that the evidence provided showed that the Supplier was able to provide a holiday to the Maldives, so it didn't think there was evidence to suggest a misrepresentation. Further, it appeared that there was evidence that something Mr G had been given had an age limit of 65, but he was able to arrange holidays through the Supplier, so he was able to benefit from his membership at the time he purchased it.

One of our investigators considered the complaint, but didn't think The Co-op needed to do anything more to put things right. She didn't think there was enough to say the Supplier had misrepresented the membership to Mr G. She went on to consider s.140A CCA, in particular whether there was an unfair debtor-creditor relationship arising out of the purchase, but didn't think there was.

PR responded on Mr G's behalf and disagreed. It pointed out some factual findings it disagreed with and said that the Supplier had appeared in a consumer protection television programme showing that many of its products were fraudulent.

As Mr G didn't agree with the investigator's view, the complaint was passed to me for a decision. Having considered everything, I issued a provisional decision, explaining that I didn't think The Co-op needed to do anything further, but for different reasons to our

¹ Although the membership was in the names of Mr and Mrs G, as only he was a customer of The Co-op, only he is able to make this claim. So I'll refer to Mr G throughout.

investigator. I looked at the documents available and what payments were made to determine what agreements I thought were in place. I then considered whether the claims made by Mr G were something for which The Co-op could be liable.

The available documents

Mr G provided a number of documents from the time of sale in April 2016.

I saw a document titled "*SUBSCRIPTION FOR THE EXCLUSIVITY OF [LLG]*". It contained Mr G's details and said the total was £6,250.

There was a set of terms provided by the Supplier that said:

"...2. The duration of this application is for a period of 364 days from the date of completion of this agreement. However, after the 364 day period has elapsed the person/s can renew for no additional cost and this facility is repeated at the end of each 364 day period...."

7. The week of accommodation in the Canary Islands is to be used before the Exclusive use of the Travel Agency"

I saw a second agreement in the form of a document on the Supplier's headed paper that set out an "*Accommodation Contract*" for a week's holiday in Tenerife and a second week in the Canary Islands for £2,500. There was a separate document headed with the name of the Supplier stating that Mr G was entitled to two weeks' worth of accommodation, the first of which was booked in the Canary Islands for March 2017, leaving one other week available. I took these two documents to be related.

There was a separate document showing that the Supplier provided accommodation between 5 and 12 April 2016 at the cost of €1,308.

I saw a document that was on the Supplier's headed paper that said Mr G was entitled to five holidays worldwide as a 'free gift'. It said each holiday was for seven nights' accommodation, plus two return flights up to £250. It said: "*Destinations include Bali, Thailand, Caribbean, amongst others.*"

Finally, there was a letter from the Supplier saying that it would instigate a claim on Mr G's behalf for £5,750. It said it would take 20% of the proceeds of the claim and gave the following timescale:

"Please note, from registering the claim, to having the monies paid into our client account, will take a maximum of 60 days"

There was a document headed "THA" and dated 7 April 2016 that described THA as the vendor to market a form of credits that could be exchanged for holidays. The total price paid was £1,250 for 500 credits, which were described as 'One Time Only'. There was a similar document from a company called "GT" providing 500 credits, but no cost was given for them.

I saw a set of terms for the use of THA credits. It was one page and was signed by Mr G, so I assumed he had the chance to read these at the time of purchase. It said:

"...4. The duration of this application is for a period of 364 days from the date of registration for no additional cost and this facility is repeated at the end of each 364 day period..."

6. Duration; Sovereign Credits are issued on a one off basis and have no designated use by date..."

There was a very similar set of terms from GT, which included the same two quoted terms.

I also saw a series of emails from Mr G to the Supplier. In July 2016 he enquired whether there were holidays available in the Maldives in March 2017 and the agent said they would look into what availability there was. There were some further emails in September 2017 with the subject line "*Holiday for 2018*" where a potential holiday in March 2018 in the Maldives was discussed. In an email on 13 September 2017, the Supplier said that Mr G would have to use a 'Golden Travel Voucher' to make the booking.

Finally, I saw a "*Holiday Request Form*" from "GTC" which had terms and conditions attached to it, one of which reads "*The holiday offer is open to home owning couple...between the ages of twenty-five and sixty-five*".² It wasn't clear when this was supplied to Mr G.

Payments made

Mr G made payments of £1,254.12 to THA and £2,508.24 to the Supplier on 8 April 2016 (with associated non-sterling transaction fees) using his credit card provided by The Co-op.

On 19 April 2016, Mr G paid the Supplier £6,185 by bank transfer.

What were the agreements?

I thought Mr G contracted with the Supplier for a number of different things. I thought the Supplier agreed to provide holiday accommodation for Mr G for a total of seven weeks. It also offered Mr G some sort of travel agency service once he had used the accommodation it supplied in the Canary Islands. Mr G paid for this in two payments as detailed above.

The Supplier also said it would make a claim on his behalf and would be paid out of the claim proceeds. No further information about this claim has been provided.

Mr G also paid THA for a number of 'travel credits'. This payment was made to THA directly, but Mr G only said he spoke with the Supplier, so I thought the Supplier must have arranged this, acting as THA's agent. I couldn't see any payment was made to Globe Trekking, so I assumed these 'credits' were provided by the Supplier as part of the deal.

The claims made

Mr G made a claim under s.75 CCA. That provision reads:

"If the debtor under a debtor-creditor-supplier agreement falling within section 12(b) or (c) has, in relation to a transaction financed by the agreement, any claim against the supplier in respect of a misrepresentation or breach of contract, he shall have a like claim against the creditor, who, with the supplier, shall accordingly be jointly and severally liable to the debtor."

That meant that here The Co-op could be responsible for misrepresentations made to Mr G by the Supplier, or for the Supplier's (or THA's) breaches of contract, as he used its credit card to pay for his membership.

Mr G identified two possible misrepresentations:

² Part of the terms are obscured on the copy I saw, so this was my best reading of them

- that he could book holidays in the Maldives using his membership; and
- that he could book holidays after he turned 65 in January 2018.

I saw emails between Mr G and the Supplier from 2016 and 2017. The emails weren't complete, but they showed a discussion about booking a holiday in the Maldives. I saw that in 2017 it appeared that Mr G was offered accommodation, which he asked to book. So, I thought the Supplier was able to arrange accommodation in the Maldives.

Mr G said that he was told that he was able to book holidays past the age of 65 when he took out membership, despite a term of the agreement saying otherwise. I couldn't see that any of the documentation from the Supplier had any term restricting the use of its services, nor did the documentation from THA or GT provided at the time of sale.

There was a document from GTC that stated its offer was open to people between twenty-five and sixty-five – that was the only thing I'd seen that mentions any such restriction. It wasn't clear to me whether this was available at the time of sale or whether it was something given to Mr G later, as it seemed to relate to the booking made in 2017. But in any event, I couldn't see that Mr G couldn't use the services of the Supplier, THA or GT after he was 65. So I thought if he was told he could book after he was 65, I couldn't say that was untrue.

It followed, I didn't think The Co-op needed to answer a claim arising out the alleged misrepresentations.

In response to our investigator's view, PR said that the Supplier went out of business and that one person was in charge of a number of different businesses – I saw evidence that they held a senior position at both the Supplier and THA. A different investigator at our service considered the new information, but didn't think that made a difference to the outcome. That was because the evidence was that the agreement Mr G entered was for a one year contract, albeit renewable. And he was able to make use of the agreement during the year he held it.

For me to say there was a breach of contract, I'd need to see evidence that Mr G was no longer entitled to something under the agreement that he was before the Supplier closed down. But I'd not seen any evidence that the Supplier had closed down, nor that Mr G was unable to get what he was entitled to under the agreement. So based on the evidence available, I couldn't say The Co-op was responsible for the Supplier's breach of contract (or THA's).

Finally, our investigator considered a potential claim made under s.140A CCA. That is a claim that there was an unfair debtor-creditor relationship between Mr G and The Co-op arising out of the purchase. But as that claim was never made to The Co-op, it wasn't something I needed to consider further.

The Co-op responded to my provisional decision to say it had nothing further to add.

PR responded on Mr G's behalf. It said Mr G believed the membership was available for a number of years and he wouldn't have bought it if he knew it was only a one year membership. PR said that the five holidays were included in the sale to make Mr G believe he was getting good value for money, but on returning home he received vouchers and he then realised that he couldn't use them due to the age restriction. Finally, PR pointed out the Supplier appeared on a consumer based television programme and that our service has upheld complaints relating to similar purchases.

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've not changed my mind from what I said in my provisional decision.

Having read the contractual documentation available, I don't think Mr G was only entitled to use the holidays and points bought for a year. Rather, the agreement was for 364 days, but then automatically renewed at no additional cost. So, in effect, there was no time limit on when he could use the holidays and points he bought – something explicitly said in the THA and GT terms as set out above. So I don't agree Mr G only had a 'one year' membership.

PR has said that Mr G found out that he couldn't use the vouchers due to age restrictions when he returned home from holiday. But that doesn't fit with what was said that the start of the claim – that the Supplier told him to ignore those terms. Further, I've not seen anything to suggest Mr G couldn't use the services of the Supplier, THA or GT due to any age limits, which were the services he took out at the time of sale. So I can't say there was any misrepresentation or breach of contract that arose from this.

Finally, I understand Mr G's concerns about the Supplier and that our service may have upheld similar claims. My role is to consider the evidence and arguments made in each individual complaint. I've carefully thought about the actual claims Mr G has made and the evidence available that relate to those claims. And for the reasons set out above, I don't think the evidence is sufficient to mean The Co-op ought to have accepted those claims.

My final decision

I don't uphold Mr G's complaint against The Co-operative Bank Plc.

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

Mark Hutchings
Ombudsman