DRN-4393910

The complaint

Ms A complains that National Westminster Bank Plc ("NatWest") unfairly declined her claim under section 75 of the Consumer Credit Act 1974 (the "CCA") in relation to the purchase of a holiday club membership using her credit card.

What happened

In or around 2012, Ms A was looking for a holiday to book through an online service. Whilst doing so, she saw a message offering a discount through a holiday club. Using this offer, she managed to secure the discount advertised for her online booking.

In June 2012, Ms A went away on the holiday she'd booked, where she was greeted and taken to a meeting and presentation that related to the purchase of a holiday club membership from a supplier who I'll refer to as "C". Ms A says the meeting lasted a whole day in which she was told about the benefits of membership.

Ms A agreed to purchase the holiday club membership through C and used her NatWest Credit Card to pay a deposit of £1,236.54. However, that evening she developed worries and concerns about what she'd committed to and decided she wanted to cancel her application. So, she spoke with C the following day to voice her concerns. C then explained various other benefits and features she could have access to and persuaded her to upgrade her original application. So, Ms A agreed to purchase the upgraded membership for a total cost of £4,480, with the balance paid by bank transfer from an account with another business.

In or around September 2018, using a claims management company (the "CMC"), Ms A submitted a claim to NatWest under section 75 of the CCA ("S75"). The CMC said the claim was presented on the grounds a contractual breach had occurred in October 2012. The CMC said C was wound-up on 3 October 2012 and they were no longer allowed to trade. And as a consequence, C were also no longer able to fulfil their contractual obligations.

Having considered Ms A's claim, NatWest didn't agree it should be upheld. They thought Ms A's claim had been brought too late. Whilst the claim letter from the CMC was dated 24 September 2018, it wasn't date stamped as received by them until 14 November 2018. And this was more than six years from the point at which the breach occurred.

Ms A and the CMC didn't agree with NatWest's findings. They thought the onus lay with NatWest to prove the claim letter wasn't posted earlier. But NatWest disagreed. So, Ms A asked the CMC to refer matters to this service to consider further.

As a consequence of that referral, there have been numerous exchanges between all parties involved. During the course of this service's investigation, the CMC ceased to act for Ms A. So, she enlisted the support of a professional representative (the "PR").

One of our investigators considered all the information and evidence available. Having done so, they thought the club membership had been sold by a different company who I'll refer to as "CCS". And the payment had been made to third company who I'll refer to as "Company I". The investigator said there needed to be a valid debtor-creditor-supplier ("DCS") relationship for a claim under the CCA to be considered. And our investigator didn't think the link was sufficient between C and Company I to show that relationship did exist. But based upon evidence provided by the PR, our investigator did think there was a valid link between CCS and Company I. So, thought that claim could be considered. However, because

evidence suggested the claim wasn't received by NatWest until 14 November 2018, our investigator thought Ms A's claim had been brought too late under provisions within the Limitation Act 1980 (the "LA").

The PR didn't agree with our investigator's findings. They provided evidence they thought supported their argument that C and Company I were sufficiently related to comply with the provisions within section 187 of the CCA (as defined in section 184). Further, the PR referred to other similar decisions previously issued by this service.

The PR also provided evidence that C (and its related companies) had entered into an agreement with another company (who I'll refer to as "Company L") in July 2012. They said that agreement resulted in Company L taking on all membership and administrative responsibilities from C (and its related companies). Because of that, they said this meant Ms A's membership remained in place from that point.

The PR went on to show that Company L continued to manage the club until 2015, when a petition to wind-up Company L was issued. They said it was at this point that the breach of contract occurred. And because the claim was received by NatWest in November 2018, the claim was in time under the LA. The PR also said that a claim for misrepresentation had also been submitted to NatWest but hadn't been considered by this service.

As an informal resolution couldn't be reached, Ms A's complaint against NatWest has been referred to me to consider further. Having done so, while I was inclined to reach the same outcome as our investigator, I considered a number of issues which I don't feel were previously fully addressed. So, I issued a provisional decision on 12 September 2023 giving both sides the chance to respond before I reached a final decision.

In my provisional decision, I said:

> I noticed that the claim letter dated 24 September 2018 hadn't made any mention of misrepresentation. So, I asked the PR to provide further clarity on this point.
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> In response, the PR referred to and provided a copy of another letter of claim dated 20 September 2018, which they say was sent to NatWest by the original CMC. That letter detailed various alleged misrepresentations that Ms A says C made when she purchased the membership product. The claim letter said the exclusive holiday package presented to Ms A was said to include:
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> - *"5 free seven night (Freestay) Travel vouchers for European accommodation for four people plus 2 return flights, up to the value of £50";*
> - *"A Cashback redemption policy which would entitle them to a guaranteed claim for £3,330 after a 3 year period had elapsed";* and
> - *"A* […] *discount holiday and lifestyle membership".*
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> But *"it soon became apparent that the package they had agreed to purchase was not as described",* with vouchers restricted by availability and destination, subject to compulsory timeshare presentations and a service charge payable per booking. They said none of this had been explained to Ms A at the time of the sale.
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> I asked whether NatWest had received and considered the claims of misrepresentation contained in the letter dated 20 September 2012. In response, NatWest said *"breach of contract and misrepresentation are considered together when investigating a claim under section 75, which is what happened here".* But they also said they were *"unable to locate a* [date] *stamped copy of the letter dated 20 September 2018".*
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> Relevant Considerations
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> The original membership contract purchased in June 2012 involved a payment made using a credit card in Ms A's sole name. So, while the holiday club membership

appears to have been purchased in joint names with another party, Ms A is the only eligible claimant under the CCA and, as such, the only eligible complainant.

When considering what's fair and reasonable, DISP 3.6.4R of the Financial Conduct Authority ("FCA") Handbook means I'm required to take into account; relevant law and regulations, relevant regulatory rules, guidance and standards and codes of practice; and, where appropriate, what I consider was good industry practice at the relevant time.

S75 provides protection for consumers for goods or services bought using credit. Mrs A paid a contribution towards the purchase with a credit card issued by NatWest. So, it isn't in dispute that S75 may apply here. This means that Ms A could be afforded the protection offered to borrowers like her under those provisions – subject to any restrictions and limitations. As a result, I've taken this section into account when deciding what's fair in the circumstances of this case.

Given the facts of Ms A's complaint, relevant law also includes the LA. This is because the original transaction - the purchase funded by a credit card payment - took place in 2012. Only a court is able to make a ruling under the LA, but as it's relevant law, I've considered the effect this might also have

It's important to stress that this service's role as an Alternative Dispute Resolution Service ("ADR") is to provide mediation in the event of a dispute. The complaint being considered here specifically relates to whether I believe NatWest's treatment of Ms A's claim was fair and reasonable given all the evidence and information available. This service is not afforded powers to decide a legal claim. While the decision of an ombudsman can be legally binding, if accepted by the consumer, we do not provide a legal service.

Where evidence is incomplete, inconclusive, incongruent or contradictory, my decision is made on the balance of probabilities – which, in other words, means I've based it on what I think is more likely than not to have happened given the evidence that's available from the time and the wider circumstances. In doing so, my role isn't necessarily to address, in my decision, every single point that's been made. And for that reason, I'm only going to refer to what I believe are the most salient points having considered everything that's been said and provided.

The terms of the membership purchased

I've seen some documents from the time of the sale which it's said relate to the membership Ms A says she purchased. This include a copy of the 'Membership Application' with bullet pointed summaries of the 'Services' offered and any resultant 'Liabilities'. There's also a document which includes the 'Terms and Conditions of Membership'. These documents appear to have been signed by Ms A and the joint purchasing party on 18 June 2012.

On the first page of the Membership Application, it confirms the *"Membership Type"* as *"1 year membership".*

Point 2 of the Terms and Conditions says, *"I/we understand that all memberships* […] *are for 12 months only and I/we are not guaranteed any benefits or service once this membership time period elapses".*

Point 3 of the Terms and Conditions says *"I/we understand that on expiry of the 12-month period,* […] *members will be given the option to enter into a new contract direct with* [C] *for £95".*

So, it appears the payment Ms A made with her NatWest credit card only provided a 12-month contract. And I've seen no evidence that Ms A extended her membership by paying the payment specified of £95.

S75(3) says that *"Subsection (1)[1] does not apply to a claim – (so far as any claim relates to any single item to which the supplier has attached a cash price not exceeding £100 or more than £30,000[…]".*So, if I was to find that Ms A had renewed her club membership each subsequent year with further payments of £95 using her NatWest credit card (or any other CCA regulated product) – and I make no such finding - I don't believe a valid claim could be made for that under S75 given the contract renewal price is below the minimum £100 threshold. Importantly, this means that a S75 claim can only be considered for any proven contract breach or misrepresentation that occurred in the first year of membership.

The claim for breach of contract

As I've already mentioned above, the PR has provided evidence that responsibility for the provision and administration of membership services was transferred from C to Company L in July 2012. So, it would seem Ms A remained able to use her membership up until 2015 – subject to her renewing her membership contract each year.

The PR has confirmed that the breach of contract allegation now doesn't relate specifically to the initial 12-month membership period – which was funded by Ms A's credit card issued by NatWest. They suggest the breach occurred in 2015. So, for the reasons I've stated, I don't think NatWest can be held liable under S75 for any breach of contract that's alleged to have occurred after expiry of the original membership contract period. And because of that, I can't say that NatWest's response was ultimately unfair or unreasonable.

The claim for misrepresentation

The claim letter of 20 September 2018 says the supplier misrepresented the nature and benefits of the membership to Ms A when she agreed to the purchase. And they believe this could bring cause for a claim under S75. Accepting NatWest say they considered misrepresentation as part of the overall claim, they haven't been able to find a date stamped copy of this letter so can't confirm whether it was received or not. And neither the PR nor Ms A have provided any evidence to show when this was sent to NatWest and if and when it was received.

A section 75 claim is *"an action* [that is, court action] *to recover any sum by virtue of any enactment"* under section 9 of the LA. And the limitation period under that provision is six years from the date on which the cause of action accrued. So here, Ms A had to make a claim within six years of when she entered into the purchase contract and made payment with her credit card. The PR confirm this took place in June 2012. That's because this is when they say Ms A lost out having relied upon the alleged false statements of fact at that time.

The letter including details of the alleged misrepresentations was submitted by the CMC to NatWest and dated September 2018. But given this was more than six years after the purchase was completed and Ms A first says she lost out; I believe a court is likely to find that her claim for misrepresentation falls outside of the time limit permitted in the LA.

Was the necessary arrangement in place for a S75 claim to be made?

Under Section 75 of the CCA, a "debtor-creditor-supplier agreement" is a precondition to a claim under that provision. It appears that the payment Ms A made was to Company I rather than to C or CCS. Following the High Court's judgment in the case of Steiner v National Westminster Bank PLC [2022], it's now possible that there was no such agreement in place to meet the requirements of the CCA.

[1] In relation a misrepresentation or breach of contract.

However, given the facts and circumstances of this complaint and my overall outcome with those in mind, I don't think it's necessary to make a formal finding on the debtor-creditor-supplier arrangement for the purpose of this decision. That's because I think NatWest had and has a defence to the misrepresentation claim in question under the Limitation Act 1980. Further, I also don't think the breach of contract claim is likely to succeed either for the reasons mentioned above.

Summary

I would like to reassure Ms A that I've carefully considered everything she and her representatives have said and provided. While I realise she will be very disappointed, for the reasons I've mentioned, I can't say that NatWest's treatment of her claim was ultimately unfair and unreasonable. And as a consequence, I don't currently intend to ask them to do anything more.

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.

NatWest acknowledged my provisional decision and confirmed they agree with my findings.

Despite follow up by this service, neither Ms A nor the PR have responded to my provisional decision. So, in the absence of anything new to consider here, I've no reason to vary from my provisional findings in reaching a final decision.

My final decision

For the reasons set out above, I do not uphold Ms A's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms A to accept or reject my decision before 8 November 2023.

Dave Morgan
Ombudsman