

## **The complaint**

Mrs T complains about a holiday product that she and her husband bought in 2019. Mrs T says that, because she paid using her credit card, she could bring a claim against National Westminster Bank Plc under section 75(1) of the Consumer Credit Act 1974.

Mrs T has been represented in bringing this complaint by a claims management business, and so any reference to her arguments and submissions includes those made on her behalf.

## **What happened**

Mr and Mrs T were owners of a timeshare product with Club Infiniti, a holiday club based in Portugal. While on holiday in September 2019, they entered into a memorandum of understanding by which they would be able to trade timeshare points for an interest in timeshare properties.

At the same time, Mr and Mrs T bought a holiday voucher, entitling them to a VIP holiday week, to be taken within 12 months of the purchase date of 20 September 2019. Mrs T paid for the holiday voucher using her NatWest credit card.

In March 2023 Mrs T's representatives submitted a claim to NatWest. They made a number of allegations about the sale of a timeshare product bought from MGM Muthu. They included a statement that Mr and Mrs T were told that, by buying a VIP week, they would be able to sell their timeshare commitments – rather than simply surrendering them.

NatWest's response to the claim was to say that it had no liability to Mrs T under section 75 of the Consumer Credit Act. The reason was that her contract was with MGM Muthu, but the credit card payment had been made to a different company, Leisure Bookings.

Mrs T referred the complaint to this service, where one of our investigators considered what had happened. She did not however recommend that the complained be upheld. She agreed with the bank that there was no link between MGM Muthu and Leisure Bookings which meant that section 75 could apply.

Mrs T did not accept the investigator's view and asked that an ombudsman review the case.

I did that and issued a provisional decision in which I said:

*I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. In deciding what's fair and reasonable, I must have regard to, amongst other things, any relevant law. I will therefore set out the parts of the Consumer Credit Act which I consider to be most relevant to the matters in issue here.*

### **75 Liability of creditor for breaches by supplier.**

*(1) 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.*

## **12 Debtor-creditor supplier agreements.**

*A debtor-creditor-supplier agreement is a regulated consumer credit agreement being—  
...*

*(b) a restricted-use credit agreement which falls within section 11(1)(b) and is made by the creditor under pre-existing arrangements, or in contemplation of future arrangements, between himself and the supplier*

## **11 Restricted-use credit and unrestricted-use credit.**

*(1) A restricted-use credit agreement is a regulated consumer credit agreement—*

*...*

*(b) to finance a transaction between the debtor and a person (the “supplier”) other than the creditor*

*...*

*Both the bank and our investigator concluded that section 75(1) could not apply because Mr and Mrs T’s purchase was not financed by a consumer credit agreement made under pre-existing arrangements between NatWest and the supplier. I don’t believe however that is the correct analysis here.*

## **The sale agreement**

*As I have indicated, Mr and Mrs T bought a voucher for a VIP holiday week. The terms of that purchase were set out in a two-page document on the headed paper of MGM Muthu. In summary, that document recorded that they had bought a voucher for a VIP holiday week; the VIP week had to be taken within 12 months of the purchase date; the price of the voucher was £3,950. The document also said:*

*“This is not a timeshare purchase and therefore please note that it is not cancellable or refundable in any time in the future.”*

*The document was signed for and on behalf of Leisure Dimensions Limited, a company registered in Ireland. It also gave that company certain rights and obligations in respect of the accommodation that would be offered.*

*In the circumstances, I believe that the seller of the holiday voucher (and therefore the “supplier”) was not MGM Muthu but Leisure Dimensions Limited. And the purchase of the voucher and VIP week was funded by the payment from Mrs T’s credit card.*

*Mrs T’s credit card statement shows a payment of £3,950 to “Leisure Bookings Albufeira” on 20 September 2019. I believe that is the payment for the voucher and VIP week. I must therefore consider whether Leisure Bookings Albufeira was the same entity as Leisure Dimensions Limited or, if not, what their connection was.*

*The precise identity of Leisure Bookings Albufeira is not clear. I have not been able to identify a company with that name in Ireland or Portugal or on the website of MGM Muthu. In my view, therefore, the most likely explanation is that Leisure Bookings is simply a trading style of Leisure Dimensions Limited. If it were a separate company, it would be registered somewhere and would be identifiable. If it were a subsidiary of Leisure Dimensions Limited, it would be listed in that company’s annual reports, as a number of other subsidiaries are. The bank – as the creditor which, through Mastercard, had pre-existing payment arrangements with Leisure Bookings – may be able to provide more information about its identity.*

*I have therefore approached this case on the basis that payment was taken by the supplier and have considered Mrs T's claims arising from the contract with Leisure Dimensions Limited.*

### **Claims against the supplier**

*The claims that Mrs T submitted to NatWest are, in my view, confused and bear little relation to her contract with Leisure Dimensions Limited. The original claim letter refers to a sale of a timeshare, refers to the wrong price, complains about lack of availability of accommodation (without providing any detail or evidence), mentions management fees, and even refers to the wrong credit provider. It appears to have been prepared with little or no reference to the facts of this case.*

*The claim letter also alludes to possible sales of timeshare units. It says:*

*"Our clients were told that after 3 years, instead of simply walking away from their timeshare commitments, they should purchase this week with MGM Muthu in order to be able to sell these weeks and generate some money from this, instead of just being left with nothing."*

*That statement is not reflected in the VIP week contract, which was simply for the purchase of a holiday voucher. Mrs T has not said whether she was able to use the voucher within the 12 months available.*

*Nor is that statement consistent with the memorandum of understanding. That document gives Mr and Mrs T the opportunity of buying timeshare weeks (by exchanging them for their membership points), not of selling them. And in any event, no payment was linked to the memorandum of understanding, and certainly none that was financed by NatWest.*

### **Conclusions**

*In my view therefore, the credit card payment was made under pre-existing arrangements between the bank and the supplier, Leisure Dimensions Limited. Section 75(1) could potentially therefore apply, making NatWest equally liable with Leisure Dimensions Limited for any breach of contract or misrepresentation claim which Mrs T might have under the VIP week contract.*

*Mrs T's submissions however fall some way short of showing that she has a valid claim for breach of contract or misrepresentation. She may be able to clarify and provide supporting evidence in responding to this provisional decision, and I would invite her to do so.*

*Despite having invited both parties to provide further information in support of or to clarify their respective cases, neither has done so within the timeframe I indicated in my provisional 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.*

As I have been provided with nothing further to consider after my provisional decision, I do not believe there is any good reason to change my view. I stress however that I have considered everything afresh before issuing this final decision.

**My final decision**

For these reasons, my final decision is that I do not uphold Mrs T's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs T to accept or reject my decision before 20 May 2024.

Mike Ingram

**Ombudsman**