

## **complaint**

Mr E complains that a holiday club membership he purchased using his Vanquis Bank Limited credit card was misrepresented to him.

Mr E considers Vanquis is liable to him for this misrepresentation under section 75 of the Consumer Credit Act 1974.

"Mrs G", Mr E's relative represents him in his complaint.

## **our initial conclusions**

Our adjudicator concluded that there was a valid debtor-creditor-supplier ("d-c-s") relationship in this case.

She also concluded that the holiday club had on balance been misrepresented to Mr E.

On this basis she said the complaint should be upheld.

Mrs G, on behalf of Mr E accepted this conclusion. Vanquis did not. In summary, it did not agree that the holiday club had been misrepresented to Mr E.

Vanquis asked that an ombudsman review the complaint.

## **my findings**

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

Mr E and Vanquis disagree about what happened here. So where there is a dispute about what happened, I have based my decision on the balance of probabilities. In other words, on what I consider is most likely to have happened in the light of the evidence.

### *there is a valid d-c-s relationship in this complaint*

The general effect of section 75 is that if Mr E has a claim for misrepresentation or breach of contract against the supplier he can also bring that claim against Vanquis. That is provided certain conditions are met.

One of these conditions is that there must be a valid d-c-s relationship.

Initially Vanquis disputed this existed. But it seems it now accepts there is a valid d-c-s relationship.

If I am mistaken and Vanquis is still querying this point, then I conclude that there is a valid d-c-s relationship for the reasons set out already by the adjudicator.

### *it's likely the contract was misrepresented*

Here the section 75 claim is for misrepresentation. To be satisfied that a misrepresentation has taken place I need to be satisfied that the supplier gave Mr E false information which induced him into buying the product.

Mr E says one of the main reasons he bought the holiday club membership is because he thought it would entitle him to take three free holidays.

Moreover he thought he could take the holidays at the time of his choosing. He explains he was led to believe that the free holidays were a “*thank you*” for his purchase.

He says he was amazed to subsequently find out that the “thank you” was not what he thought it was. Because the free holidays had strings attached. And these “strings” would have prevented him for taking all of the holidays.

Vanquis says Mr E got some of what he paid for. And in any event the written documentation he received at point of sale should have alerted him that he would not be able to take the holidays as and when he wanted. It says it was up to him to read this documentation.

Further Vanquis says that Mr E may have received some of the relevant documents after he signed the contract due to perfectly valid administrative reasons.

Plus it says the holidays were already discounted so the fact that Mr E had to pay an additional £200 to take the holidays was not a misrepresentation.

I see things differently from Vanquis. I think any additional material terms and conditions that related to the holiday such as the need to pay £200 should have been mentioned up front. I consider the omission of these highly relevant terms in this case was a misrepresentation.

Further Mr E may have got some of what he was promised but that does not mean that there was no misrepresentation.

From what Mr E says he did not enter the contract on the basis that perhaps he might get some of what he was promised. Rather he was told he was going to get all of it. That’s what he relied on. I find his recollections persuasive on this point.

It’s a concern that seemingly some of the contractual documents only arrived after Mr E had entered into the contract. The timing of this suggests that Mr E was told one thing before he purchased. Only to be told he’d purchased another thing altogether once the supplier had his money.

For all these reasons I’m satisfied the contract was misrepresented.

It follows that I find Vanquis liable to Mr E for this and it must now give him back his money.

### **my final decision**

My final decision is that Vanquis Bank Limited must rework Mr E’s credit card account as if the £2,502.47 had never been paid. If this should result in a credit balance it must pay interest on this at the rate of 8% simple per year from the date the credit balance would have arisen to the date of settlement.

Vanquis Bank Limited must pay the total compensation within 28 days of the date on which Mr E accepts my final decision.

If it considers it is legally required to deduct income tax from the interest, it must send a tax deduction certificate with the payment so that Mr E can reclaim the tax if he is able to.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr E to accept or reject my decision before 27 April 2015.

Joyce Gordon  
**ombudsman**