

## **complaint**

Mr S complains that The Co-operative Bank Plc will not refund the purchase of a holiday club membership. He paid the deposit using a credit card and brings his claim under Section 75 of the Consumer Credit Act 1974.

Mr S is represented in this complaint by a claims management company.

## **background**

In October 2005 Mr S and his late wife purchased a holiday club membership. Mr S paid €1,611.76 by credit card and then €14,477.07 by bank transfer. In addition, they traded in two existing timeshares. In return they were given membership to the holiday club and a guarantee they would receive £35,823 under a cashback scheme.

Mr S says they returned the cashback certificate as required but did not receive any refund.

Mr S complained to Co-op in September 2011 and then brought the complaint to this service.

Co-op said they should not have to provide a refund because they do not believe there was debtor-creditor-supplier agreement in place, the misrepresentation complained of was by a third party not the supplier, and the cashback certificate contained the terms and conditions that were signed by Mr S.

Our adjudicator considered that the complaint should be upheld and Co-op should provide a refund, together with interest. This was because he concluded that the contract had been misrepresented to Mr S.

Co-op did not respond to our adjudicator's view and subsequent letters.

## **my findings**

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

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.

I have looked carefully at everything Mr S has said to this service and I find his description of events and his subsequent actions to be credible and compelling. For example, in his witness statement Mr S says that "*Having had a few problems with our existing timeshares, the thought of being able to 'sell' these was very appealing.*" and that this combined with the value of the timeshares being added to the cashback scheme was a "*key benefit*". He also says that during the sales discussion he was guaranteed 100% of his money back.

On balance, I am satisfied that Mr S entered the contract because the salesman said that he would be guaranteed £35,823 after 59 months, and he would not have entered the contract had he not been told this.

Having inspected the terms and conditions of the cashback promotion, I conclude that he was only ever guaranteed to receive 10% of the amount shown on the certificate.

Therefore I consider that the contract was misrepresented to Mr S and in the circumstances of this case he does have a valid claim under Section 75.

The purpose of any award in respect of misrepresentation is to put the complainant back in the position they would have been in, so far as is possible, had the misrepresentation not occurred. In this case, I am satisfied that Mr and Mrs S would most likely not have entered into the contract and would not have paid the holiday club company.

Enquiries by this service suggest that the timeshares that Mr S traded in are currently valued at approximately £3000.

Overall and on balance, I conclude that it is fair and reasonable to require Co-op to refund the full amount that Mr S paid for the membership, together with interest on this and the value of the timeshares that he traded in, which I have concluded is £3000.

### **my final decision**

My final decision is that I uphold this complaint. In full and final settlement of it, I order The Co-operative Bank Plc to:

- 1) Refund the two payments Mr S made on his credit card totalling €1,611.76 and rework his account as if these payments had not been made;
- 2) Pay Mr S €17,678.57, representing the payment he made by bank transfer;
- 3) Interest on the sum at 2) above at a rate of 8% simple a year from the date of payment to the date of settlement; and
- 4) Pay Mr S £3000 representing the value of the timeshares he traded in.

If The Co-operative Bank Plc considers that it should deduct tax from the interest element of my award it should provide Mr S with the appropriate tax deduction certificate. He may then be able to reclaim the tax from the tax authorities, if appropriate.

Garry Hunter  
**ombudsman**