

complaint

Mr W complains that The Co-operative Bank Plc (The Co-op) has refused to refund him for money paid to a company in respect of holiday club membership – he says it misrepresented the benefits to him and breached its contract with him. His claim is brought under Section 75 of the Consumer Credit Act 1974 (section 75). Section 75 says The Co-op could be liable to Mr W for misrepresentations and breaches of contract made by the holiday club company.

background

Mr W told us he paid for the Platinum (invitation only) membership of a holiday club called C. The membership was sold to him over the telephone on 19 July 2008. He says it was a high pressured sale – which had inviting offers available for that day only – so he agreed to buy the membership.

The total price for the membership was £25,600. He traded in his existing timeshare for £16,600 and paid a deposit - leaving a balance of £8,150 to pay. He paid the whole balance but part of it was paid for by his Co-op account card. In return, he expected lifetime membership access to discounted flights and accommodation that couldn't be bettered anywhere else.

Soon after receiving the membership details in the post, he realised that everything he'd been told during the telephone conversation was misrepresented to him. There was no discounted accommodation available, parts of C's website were inaccessible or "*under construction*", there was a limited amount of accommodation offered and limited choices of worldwide destinations available. He even discovered in 2008 that he could find the same holidays on the internet for a lower price.

He also expected to claim back £25,600 on a EuroCashback voucher, provided he made a claim for it within 36 months and observed set conditions. He sent his claim in the required time period. But was told he'd filled in the claim incorrectly and didn't qualify for the cashback offer. So he felt the representations made about the cashback in 2008 were also false.

As a result of the misrepresentations, he claimed for all money paid for the membership and all money he should've received on the EuroCashback offer from The Co-op under section 75.

The company, C, was wound up in 2012. And Mr W says his contract was also breached at that point because he couldn't use his membership in the same way as it was sold to him in 2008. And he claimed all money should be repaid to him for breach of contract by The Co-op under section 75.

The Co-op said all the misrepresentations happened in 2008 during the telephone call. And Mr W complained to it in 2015. So The Co-op says Mr W couldn't bring his complaint because he was outside the 6 year time limit.

Mr W complained to this Service. Our adjudicator also thought the complaint about the misrepresentations in the contract was out of time, and this Service couldn't deal with it. But he also looked at the possible breach of contract in 2012 – he decided there was no breach of contract because another company, P, took over the membership to offer the same services as Mr W had bought.

Mr W disagreed with the adjudicator's view and said the alternative membership offered is nothing like the Platinum membership from C. So there is still a breach of contract in 2012 – and his complaint has been brought in time.

my findings

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 don't think I have the powers to look at whether the section 75 claim should succeed because of possible misrepresentations and breach of contract in 2008.

And in respect of whether there was a breach of contract in 2012, I can look at the section 75 claim against The Co-op. But I'm not going to uphold that part of the complaint and I'll explain why below.

the misrepresentations and breach of contract in 2008

The rules in which I must work set some time limits for complaints that are brought to me. These are called the Financial Conduct Authority's (FCA) Dispute Resolution rules (DISP). Our adjudicator set out the rules in detail in his letter to Mr W, so I don't need to repeat them here.

Generally, I can't consider a complaint which is brought more than 6 years after the event complained of or 3 years from the date on which Mr W became aware or ought reasonably to have become aware of the reason for his complaint.

In this case, Mr W said all the representations and high pressured sales techniques were made on the telephone to him in July 2008. And because of them, he bought the membership. He says when he received the membership package soon after paying - and I think I can reasonably assume this was still in 2008 - he realised that everything about the Platinum membership and the EuroCashback had been misrepresented to him. And he could find similar holidays on the internet at lower prices. So he argues misrepresentations were made and the contract was breached in 2008.

The Co-op has objected to me looking at the complaint as it's allowed to do. It says Mr W should've complained about the misrepresentations/breach of contract within 6 years from the date of sale. And I think he could also have complained about these events within 3 years of the date when he was first aware of the misrepresentations/breach of contract after he bought the membership.

But he didn't complain to The Co-op until 2015. So I agree with our adjudicator and The Co-op that I can't look at the part of the complaint which deals with the events in 2008. So I'm not going to consider it.

was there a breach of contract in 2012?

Mr W said the contract was also breached in 2012 when C stopped trading and was wound up. He says he couldn't then access his lifetime membership and other benefits which had been promised.

But Mr W sent us the terms and conditions of the agreement he had with C. And they said all the services were carried out by another company called P. P told us the actual holiday company that provides the services has never been wound up – so those services would continue. P also said it had sent emails to all of C's members confirming how they could book holidays and deals which are still available. P explained the memberships were transferred to another company which continued to offer membership services at the same price Mr W was paying to C.

Taking everything into account, I don't have the powers to look at the first part of the complaint about the events in 2008 – so I haven't considered it.

I think I can consider the events in 2012. But I don't think the contract was breached in 2012. So I'm not going to uphold that part of Mr W's complaint.

my final decision

My final decision is that I do not uphold that part of the complaint relating to events in 2012 and I make no award against The Co-operative Bank Plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 18 February 2016.

Amrit Mangra
ombudsman