

## **complaint**

Mr W, through his representative, complains he bought group holiday credits which were misrepresented. He wants The Royal Bank of Scotland plc to refund him under section 75 of the Consumer Credit Act 1974 as he paid with his RBS credit card.

## **background**

Mr W bought group holiday credits with the supplier in October 2013. He says the supplier fraudulently misrepresented what he'd get. Mr W says he hasn't been able to use the credits or cashback scheme. He says he was told he could receive discounts on holidays booked through the group ABTA agent. But, the agent isn't ABTA registered. He also says he was told he'd be paid for referring others, but, he hasn't been given details of anyone to refer.

RBS says there wasn't any information to show that Mr W had tried to register for the cashback scheme or to access the savings. It also says that the ABTA registered agent was only a concierge service through which holidays could be booked. It says the information provided by Mr W didn't show any misrepresentation or breach of contract by the supplier.

The adjudicator says Mr W hadn't tried to register for the cashback and didn't try to use the credits. He notes the savings of up to 40% on holidays wasn't a guarantee. He doesn't feel the payment for recommending others amounted to a breach of contract. He doesn't agree that the supplier misrepresented the contract or breached it.

Mr W doesn't agree. Through his representative, he says he's been able to show that the grounds for a claim under section 75 have been met. He says the bank should give him a full refund plus interest.

## **my findings**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

In bringing this complaint, Mr W's representative has provided a lot of information about other clients' experiences of similar contracts with the supplier. I will only consider Mr W's complaint on its individual merits.

Under section 75, RBS will only be jointly responsible with the seller if there's been a breach of contract or misrepresentation of what Mr W would get when he entered into the contract.

Mr W says he entered into the contract after a long day of presentations from the supplier. I appreciate he may have been tired after the day, but, I've seen nothing to persuade me that he wasn't able to make an informed judgement about what he was signing.

I'm aware that Mr W hasn't tried to use the credits and hasn't registered for the cashback scheme. I've seen details of what's available on the supplier's website. I haven't seen anything to persuade me that Mr W couldn't use the credits or cashback if he wanted to. So, I don't accept that there's been a misrepresentation here.

The adjudicator spoke to Mr W and he said a significant factor that made him enter into the contract was that he'd get discounted holidays through the ABTA registered agent. I've looked up the ABTA registration number and am satisfied that it doesn't relate to that agent. So, the information is false. But, this was only one part of the overall contract.

I appreciate that the agent being ABTA registered would have given reassurance to Mr W. I'm not clear when he discovered that the agent wasn't ABTA registered. But, from what I've seen, I don't think this was immediate. I know Mr W didn't try to book a holiday through the agent at any point. And I'm not persuaded that Mr W would have done anything differently even if the agent had been ABTA registered.

From what I've seen, I don't think that Mr W would have walked away from the contract if he'd known the agent wasn't ABTA registered. I've concluded this as the contract included several different things, all of which Mr W's representative says were important.

Mr W's representative also says that he relied on the supplier saying that he could earn an income by recommending others to the scheme. His representative says he's never been given any names of people to refer. I've seen the terms for this part of the scheme. From what I've seen, Mr W could refer his own friends if he wanted to do so in the first instance. I think the contract terms here were clear and don't agree that there's been a breach.

Mr W's representative has raised a lot of issues about the extent to which the supplier's own credentials are to be trusted. I am not in a position to comment on the supplier's business methods; that's a matter for a regulator or a court.

Overall, I'm not satisfied that there was a misrepresentation or breach of contract here. As far as I've seen, Mr W's never tried to use any of the elements of the contract that he bought. If he'd done so, and had found that what was promised simply didn't exist, then both the bank's decision and my own might have been different. Based on the information here, I know Mr W will be disappointed, but I don't uphold this complaint.

### **my final decision**

My final decision is I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 10 March 2016.

Loucia Kyprianou  
**ombudsman**