

## **complaint**

Mrs L thinks Bank of Scotland Plc has unfairly rejected her claim under section 75 of the Consumer Credit Act 1974 ('CCA').

## **background**

I issued a provisional decision on 23 February 2021. A copy of my provisional decision is attached and forms part of this final decision.

My provisional decision sets out the background to this complaint and explains why I don't think it was unfair for Bank of Scotland to reject Mrs L's claim under section 75 of the CCA.

Both Mrs L and Bank of Scotland have confirmed that they've received and accept my provisional decision.

## **my findings**

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

As Mrs L and Bank of Scotland have accepted my provisional decision, I confirm my provisional findings. My reasons remain the same.

## **my final decision**

For the reasons I've explained above and in my provisional decision, I don't think it was unfair for Bank of Scotland Plc to reject Mrs L's claim under section 75 of the CCA.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs L to accept or reject my decision before 9 April 2021.

Christopher Reeves  
**ombudsman**

## My provisional decision

### complaint

Mrs L thinks Bank of Scotland Plc has unfairly rejected her claim under section 75 of the Consumer Credit Act 1974 ('CCA').

### background

On 8 February 2012, Mrs L and her husband, Mr L, were on holiday in Tenerife when they were approached by someone in the street. They were given a scratchcard, which indicated they'd won a prize. When they went to a nearby resort to claim it, they attended a presentation about a membership scheme, which included a Leisure Time Passport. They say they were told the Leisure Time Passport would allow them to buy holidays at a significant discount. To encourage them to join the scheme, which they did, they were also offered two 'free' holidays. They paid €2,700 (£2,359.64) to join the scheme.

In 2015, Mrs L wrote to Bank of Scotland to make a claim under section 75 of the CCA. Mr and Mrs L say the benefits of the Leisure Time Passport were misrepresented. Specifically, they say they tried to use it to book a holiday in Devon and were told the holiday would cost £700. They say they looked online and found the same holiday – at the same location and for the same days – for less than £400, so they booked it online instead. Mr and Mrs L also say the 'free holidays' were misrepresented. Specifically, they say:

- The holidays weren't 'free' because they had to pay a registration fee.
- They were given a long list of countries that were supposedly included, but they were unable to book a holiday to where they wanted to go. In the end, they went to Tenerife and Malta.
- When they arrived on holiday, they were told they had to attend a sales presentation, and if they didn't, they'd have to pay for their accommodation.

In May 2015, Bank of Scotland rejected Mrs L's claim. Mrs L asked it to reconsider, which it did. But when its position remained the same, she referred her complaint to our service.

### my provisional findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. When considering what is, in my opinion, fair and reasonable in all the circumstances of the case, I'm required by DISP 3.6.4R of the Financial Conduct Authority (FCA) Handbook to take into account:

'(1) relevant:

- (a) law and regulations;
- (b) regulators' rules, guidance and standards;
- (c) codes of practice; and

(2) ([when] appropriate) what [I consider] to have been good industry practice at the relevant time.'

When the evidence is incomplete, inconclusive or contradictory, I've made my decision on the balance of probabilities – that is, what I think is most likely to have happened given the available evidence and the wider circumstances.

### Was there a debtor-creditor-supplier agreement?

Section 75 of the CCA protects consumers who buy goods and services on credit. It says, in certain circumstances, the finance provider is legally answerable for any misrepresentation or breach of

contract by the supplier. And section 56 of the CCA says that any pre-sale negotiations between Mrs L and the supplier are deemed to have been conducted by the supplier as agent of the finance provider.

However, for section 75 to apply, there must be a debtor-creditor-supplier agreement under section 12(b) or (c) of the CCA.

A credit card can involve a debtor-creditor-supplier agreement falling within section 12(b). Mrs L is the debtor and Bank of Scotland is the creditor. There is, however, some ambiguity about the supplier in this case. Below, I've explained what we know from the available evidence.

### *The available evidence*

Mrs L has sent us a 7-page document, completed at the point of sale, which includes:

- A 2-page 'affiliation and purchase' contract, dated 8 February 2012, between an entity called 'A Vacation in the Sun by Agentes Canarios S.L.' and Mr and Mrs L.

This contract – which I'll call 'Contract 1' and which is the subject of this complaint – says very little.

The first page includes the business address, some personal information about Mr and Mrs L, and the contract price. The 'cost of affiliation' was €2,571.43. 'IGIC' – which appears to be a tax – was €128.57. The total contract price was therefore €2,700, which was, according to the contract, 'to be paid by card on the 24/02/2012'.

The second page includes 5 'conditions of affiliation and purchase':

1. This contract has a duration of thirty six (36) months, commencing 24/02/2013.
2. An Interval International Leisure Time Passport will also be provided at the commencement date of this contract.
3. A Cruise Voucher provided by Vacation Promotions International (VPI) will also be made available as a gift at the commencement of this contract. This voucher is subject to VPI's terms and conditions and bookings are to be made directly with VPI using the Certificate of Registration provided in the voucher.
4. The Company is obliged to provide the accommodation as described in this contract, subject to availability, however if due to unforeseen circumstances the conditions of the accommodation could change.
5. This contract is subject to International Jurisdiction, it is not subject to any changes with regards to content and duration stipulated.'

The second page has been stamped with 'Agentes Canarios, S.L. B-76542273', next to the signature of whoever signed the contract 'on behalf of and representing A Vacation in the Sun'.

- A 2-page 'affiliation and purchase' contract, dated 8 February 2012, between an entity called 'Fuerteventura Life S.L.' and Mr and Mrs L.

This contract – which I'll call 'Contract 2' and which is not part of this complaint – includes the company logos of 'Grand Holidays' and 'Interval International'.

The first half of the first page is very similar to Contract 1: it includes the business address ('Hotel Flamingo'), some personal information about Mr and Mrs L, and the contract price, which was, according to the contract, 'paid by card 08/02/2012'.

The same person who signed Contract 1 'on behalf of and representing A Vacation in the Sun', signed Contract 2 'on behalf of and representing Fuerteventura Life S.L.' A stamp next to the signature says, 'Grand Holidays Club, Fuerteventura Life, S.L. B-38872933'.

- A 1-page letter, dated 8 February 2012, with the company logos of 'Grand Holidays' and 'Interval International' at the top, which says:

'As a thank you for trying us out today, the holiday you have won will be upgraded to a free week in a one bedroom apartment in any destination offered by Grand Holidays.'

Next to the words 'Authorised by', the letter's been stamped with 'Agentes Canarios, S.L. B-76542273'.

- A 1-page letter, dated 8 February 2012, with the company logo of 'A Vacation in the Sun' at the top, which says:

'As a special thank you for giving us a try today, A Vacation in the Sun is giving you a gift of one week Worldwide holiday, including two return flights...'

Next to the words 'Yours sincerely', the letter's been stamped with 'Agentes Canarios, S.L. B-76542273'.

- A 1-page letter, dated 8 February 2012, with the company logo of 'A Vacation in the Sun' at the top, which says:

'As a special thank you for giving us a try today, A Vacation in the Sun is giving you a gift of one week European holiday, including two return flights...'

Next to the words 'Yours sincerely', the letter's been stamped with 'Agentes Canarios, S.L. B-76542273'.

Bank of Scotland has also sent us three documents – although I assume Mr and Mrs L sent it the first two:

- A 1-page letter – undated and addressed to 'Leisure Time Passport member' – which refers to 'Interval International's global network of resorts' and explains the various benefits of membership.
- A 1-page Leisure Time Passport 'application form and agreement', which has been completed by hand – although what's handwritten is illegible. The form says it should be returned to 'Interval International' and that 'Interval' will send a personalised membership card on receipt of the form. It also says:

'I understand and acknowledge that the person and/or entity that sold me membership of Leisure Time Passport is independent of Interval International.'

- The 'terms of conditions of Leisure Time Passport', which says:

'The Leisure Time Passport membership program is offered by Worldwide Vacation & Travel Inc.'

Finally, Mrs L has sent us her credit card statement dated 6 March 2012. On 8 February 2012, she used her Bank of Scotland credit card to make two payments of £428.20 to 'Hotel Flamingo Adeje Casco' – which I assume was the contract price of €1,000 for Contract 2. On 24 February 2012, Mrs L used the same card to pay 'A.C. Flamingo Adeje Casco' £2,359.64 – which I assume was the contract price of €2,700 for Contract 1.

#### *The businesses involved*

Various businesses are mentioned in connection with Contract 1.

The 'supplier' in the context of a debtor-creditor-supplier agreement is the party to the transaction financed by the credit agreement who isn't the debtor. In this case, that's 'A Vacation in the Sun by Agentes Canarios S.L.' – which I'll call 'Agentes Canarios' from now on.

However, the contract refers to three separate services, provided by three distinct businesses:

- The Leisure Time Passport provided by Interval International.

I appreciate that the terms and conditions I've mentioned above say the 'membership program is offered by Worldwide Vacation & Travel Inc.' ('WVT'), but an online search shows that Interval International and WVT share (or shared) an address in Florida, and that WVT may have been a subsidiary of Interval International's parent organisation in 2012. And in promotional material available online, a membership programme 'offered by Interval International' includes benefits that 'are administered by [WVT] d/b/a Interval Travel' – 'd/b/a' means 'doing business as'. There's clearly some connection between Interval International and WVT. As I don't think it makes a material difference to the outcome of this complaint, I don't think I need to clarify exactly what that relationship is or was in 2012.

- The cruise voucher provided by Vacation Promotions International ('VPI'). As Mrs L hasn't mentioned this as part of her complaint, I'll say no more about it.
- 'Accommodation as described in this contract', provided by 'The Company'.

This is indicative of how poorly drafted the contract is.

First, there's no accommodation described elsewhere in the contract. (Above, I've set out in full the five contractual terms.)

Second, 'The Company' isn't defined. For the purpose of this decision, I'll assume it means Agentes Canarios.

That said, Agentes Canarios, Grand Holidays, Fuerteventura Life, and Hotel Flamingo all appear to be connected. Aside from the various cross-references in the paperwork, an online search shows: the website for 'A Vacation in the Sun' was owned by Grand Holidays at the time; and, Grand Holidays and Fuerteventura Life are or were both registered with Spain's Central Mercantile Register, they have more than one company officer in common, and they both list the 'Hotel Flamingo' in Adeje as their address. And on balance, I think the payment to 'A.C. Flamingo Adeje Casco' was, in effect, a payment to Agentes Canarios.

In the context of section 75, when the 'supplier' isn't the provider of the service, the creditor may not be liable for any misrepresentation or breach of contract: it will depend on the precise contractual arrangements between the debtor, the 'supplier' and the provider of the service – and whether or not the 'supplier' and provider of the service are 'associates' as defined by section 184 of the CCA.

In this case, Agentes Canarios was the 'supplier' and the provider of a service – even if it's unclear exactly what that service was.

I'll therefore assume, for the purpose of this decision, that Bank of Scotland is liable for any misrepresentation or breach of contract by Agentes Canarios.

I appreciate that Interval International was also the provider of a service or services. And although there's some evidence that Grand Holidays (and therefore Agentes Canarios) and Interval International are connected – the Grand Holidays website refers to the benefits of being 'a Grand Holidays Club member with Interval International' and makes repeated references to Interval International – it doesn't look like they're 'associates' as defined by section 184 of the CCA. I don't know anything about their contractual arrangements, and I haven't had the benefit of submissions from Bank of Scotland or Mrs L on whether the scope of Bank of Scotland's liability is therefore limited. However, as I don't think it makes a material difference to the outcome of this complaint, I'll proceed on the basis that its liability isn't limited.

And on this basis, I'll consider Mr and Mrs L's specific complaint points.

#### The alleged misrepresentation

A misrepresentation is a statement of fact by one party to a contract, which isn't true and which persuades the other party to enter into the contract.

Mr and Mrs L says Agentes Canarios misrepresented the benefits of the Leisure Time Passport. They say they were told it would allow them to buy holidays at a significant discount. I'm quite sure this is what they were told. After all, the 1-page letter addressed to 'Leisure Time Passport member', which I've mentioned above, says exactly that:

'As a member of Leisure Time Passport you also have access to the following fantastic benefits...

...

- International hotels – 50% discount at over 5,000 hotels around the world. Plus up to 20% off dining and leisure attractions in USA and Canada.
- Leisure Breaks – 50% discount on accommodation in the UK and Ireland plus savings on European coach trips and ferry fares in Ireland.

...'

However, on the evidence I've seen, I don't think I can safely say this statement isn't true.

Mr and Mrs L say they tried to use the Leisure Time Passport to book a holiday in Devon and were told it would cost £700. They say they found the same holiday online for less than £400.

Unfortunately, they're unable to provide any written evidence. Mr and Mrs L say it was the same hotel, on the same days. But that doesn't mean it was the same holiday. The rooms may have been different, the more expensive quote may have included additional benefits, etc. As I'm unable to compare the two quotes, I don't know if I'm comparing like-for-like. Second, even if the holiday was the same or very similar, a cheaper online price doesn't mean the initial quote didn't include a discount – the online price may have just included a larger discount. Again, without knowing more, I can't say. On their own evidence, Mr and Mrs L tried to use the Passport just once. I simply don't know if this was a one-off, indicative of something more from which I could infer that the benefits were misrepresented or a difference in price because the services were different.

I'm therefore unable to conclude that the benefits of the Leisure Time Passport were misrepresented.

Mr and Mrs L also say the one-week European holiday and the one-week worldwide holiday they were given as 'gifts' to encourage them to join the scheme were misrepresented.

First, they say they had to pay a registration fee, so the holidays weren't 'free'.

When Mrs L wrote to Bank of Scotland on 19 February 2015, she said they paid £228 in registration fees. When Mr L spoke to one of our adjudicators on 21 November 2018, he provided more detail. Before they successfully booked a 'free' holiday to Tenerife, they twice tried to book a holiday elsewhere. They had to pay a 'processing fee' of £69.50 per person the first time, and £44.50 per person the second time. Apparently, this was because they wanted to go 'further afield'. They made the payments by cheque, and the money wasn't refunded even though they didn't book a holiday. When they successfully booked the holidays to Tenerife and Malta, they didn't have to pay a processing fee.

The 1-page letters I've mentioned above don't say the holidays are 'free' – but they do refer to them as a 'gift', which is the same thing. And I think it's very likely they were told orally that the holidays were 'free'.

I don't know why they had to pay the 'processing' fees, why they weren't refunded when the holidays weren't booked or why they didn't have to pay them when they actually booked a holiday. But even if I accept that they were payable in any event – and I don't know that they were – I think the statement that the holidays were free was, if not entirely correct, substantially correct. The accommodation and flights, by far the most expensive part of any holiday, were free – a point I'll return to below. And even if the sales person said the holidays were 'completely free', I don't think the difference between what was represented and what's correct – that a small 'processing' fee was payable – would have made any difference to Mr and Mrs L's decision to join the scheme.

Second, Mr and Mrs L say they were unable to book a holiday to where they wanted to go. In the end, they went to Tenerife and Malta.

In the letter she sent Bank of Scotland on 19 February 2015, Mrs L said the holidays were 'essentially cancellation' holidays – and they had to be prepared to travel at short notice from any airport to any destination. And she said: 'The only way around this was to pay for the flights ourselves although the accommodation would still be free.' Mrs L said they were told the destination would be 'largely' up to them, but 'so many obstacles were put in the way' they ended up going where the company wanted them to. Mr L told us they wanted to go to Thailand, Goa or Bali, but when they proposed dates, those destinations weren't available. He said the Canary Islands were available, but on 'difficult dates' like 2 January.

I can appreciate that Mr and Mrs L were disappointed that their preferred destinations weren't available when they hoped to go away. However, the 1-page letters they were given specifically say the accommodation is 'subject to availability'. And the free flights offered may have been impractical or inconvenient for Mr and Mrs L, but they were offered free flights.

The holidays may not have been what Mr and Mrs L expected, but I haven't seen enough evidence to safely say the sales person said something that wasn't true.

Finally, the sales person may not have told Mr and Mrs L that they'd have to attend a 3-hour presentation – although both letters say: 'This week is booked through one of the many outside promotional companies with whom we have special arrangements for our trial members'.

However, not saying something isn't the same as saying something that isn't true and, except in very specific circumstances which I don't think apply here, it isn't a misrepresentation.

I know Mr and Mrs L will be very disappointed with my decision. However, I simply haven't seen enough evidence to conclude that either the benefits of the Leisure Time Passport or the 'free' holidays were misrepresented. As a result, I don't think it was unfair for Bank of Scotland to reject Mrs L's claim under section 75 of the CCA.

**my provisional decision**

Based on what I've seen so far, I don't think it was unfair for Bank of Scotland Plc to reject Mrs L's claim under section 75 of the CCA.

So unless the comments and evidence I get by 16 March 2021 change my mind, I won't tell it to pay Mrs L any compensation.

Christopher Reeves  
**ombudsman**