

## **complaint**

Mr G has complained about a holiday club membership he purchased in 2002. In summary he says:

- the discounts on holidays and flights were misrepresented to him;
- there was a breach of contract in relation to a reclaim of the cost of the membership.

As a result, Mr G is making a claim against National Westminster Bank Plc (NatWest) for a refund on his credit card, under s.75 Consumer Credit Act 1974 (s.75).

## **background**

In 2002 Mr G purchased a holiday club membership from a company which I will refer to as “B”. He made payment on his credit card for part of the purchase price. The payment was made to a different company which I will call “C”.

Mr G says he was attracted to a promotion that came with the membership – a bond certificate which was intended to pay him an amount of money after ten years. In 2012 Mr G claimed a redemption on the bond certificate but his claim was rejected on the basis that he’d failed to follow the terms and conditions correctly.

Mr G protested to B and then brought his claim to NatWest under s.75. As part of his complaint Mr G said that the holiday club’s membership benefits had been misrepresented by B – specifically that he hadn’t been offered discounts of the level expected. Mr G also said that he’d been offered a free holiday but ended up having to pay for the flights.

Mr G also complained about breach of contract in respect of the bond redemption.

NatWest objected to our considering the complaint about misrepresentation on the basis that it had been brought out of time. NatWest also said that there was no debtor-creditor-supplier (D-C-S) agreement that would allow s.75 to apply to the transaction.

Our adjudicator didn’t recommend the complaint should be upheld. Mr G disagrees. He’s provided information which he believes shows a relationship between Companies A and B sufficient to allow s.75 to apply to his case.

## **my findings**

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

Section 75 provides that, under a very specific set of circumstances, Mr G may seek to recover from NatWest money paid by his NatWest credit card under a contract with a supplier. There can only be a valid claim under section 75 if payment was made under what is known as a ‘debtor-creditor-supplier’ agreement (D-C-S) and if it can be shown that the supplier acted in breach of contract and/or misrepresented the contract.

In this case I have reviewed whether a valid D-C-S agreement exists.

Mr G's holiday club contract is with B. But it was C which received the payment through Mr G's NatWest credit card. This means that there is no relationship between NatWest and B – and so there is no D-C-S agreement here.

Mr G has argued that there is a relationship between the two companies. He's provided information which shows that C administers the website for B. Mr G also says that the two companies are run by the same person. I've considered Mr G's evidence about the website registration – but this is not sufficient to persuade me that the two companies are associated.

I have considered as well whether either of the companies involved here is an 'associate' of any other, as defined by s.184 Consumer Credit Act 1974. In this instance I have been unable to determine that such an association exists.

B is registered in the Seychelles and C is registered in Spain. The information available about Seychelles companies is very limited, and details of the parties who control companies registered there is not publicly available. This means it isn't possible to establish who controls B. It follows, therefore, that I am unable to determine whether there is an association – as defined by s.184 Consumer Credit Act – between Companies A and B.

Because of this, I've reached the same conclusion as the adjudicator – which is that there is no D-C-S agreement between Mr G, NatWest and B. This means that s.75 doesn't apply to this transaction and so NatWest has no liability to reimburse Mr G.

As I'm satisfied there's no D-C-S agreement, I do not need to go on to consider whether any part of the complaint is time-barred or if whether there has been any breach of contract by B.

### **my decision**

I do appreciate Mr G will be disappointed, but my decision is that, for the reasons given above, I do not uphold this complaint.

Jan O'Leary  
**ombudsman**