

## **The complaint**

Mr B complains that Nationwide Building Society won't refund to him the money that he paid for a lifestyle concierge product and to relinquish a holiday ownership product. He's being represented in his complaint by a claims management company.

## **What happened**

Mr B and his wife had bought a holiday ownership product in May 1995. They entered into a membership application agreement with a supplier in June 2016 for a lifestyle concierge product. The joining fee was €6,300 and they agreed to pay annual renewal fees. Mr B paid €1,226 of the joining fee using his Nationwide credit card and £974.13 was charged to his account in June 2016. Mr B and his wife paid the balance of the joining fee by other means.

Mr B and his wife also entered into a separate agreement with a holiday company to relinquish their ownership of the holiday ownership product that they'd bought in May 1995. Mr B paid €699 to the holiday company using his Nationwide credit card and £555.40 was charged to his account in June 2016.

Mr B's representative made a claim to Nationwide, on his behalf, in September 2020 under section 75 of the Consumer Credit Act 1974 for a refund of £6,870 (plus interest, legal costs and maintenance charges). It said that the supplier was in liquidation so was unable to perform its contractual obligations and was in breach of contract. It also said that the product was mis-sold to Mr B and his wife and the supplier misrepresented the product, its benefits and pressured them into purchasing a product which was unsuitable and failed to provide the advantages promised. It said that, but for the misrepresentations made to them, they wouldn't have purchased the product. Mr B provided a client statement in support of his claim.

Mr B phoned Nationwide in December 2020 about his claim but it said that it had been unable to evidence that it received any communication from Mr B's representative to request for a dispute to be raised. It asked him to provide evidence in support of his claim. Mr B then complained to this service.

Our investigator didn't recommend that his complaint should be upheld. She wasn't persuaded that there was a misrepresentation at the time of sale and she didn't think that the supplier had breached the contract that it had agreed with Mr B and his wife.

Mr B's representative provided evidence showing that the supplier had gone into liquidation in September 2019 and it said that the breach of contract arising from that liquidation hadn't been considered. Our investigator said that the contract with the supplier was renewed in September each year but she'd not seen evidence to show that Mr B had renewed the contract in September 2019. Mr B's representative, on his behalf, has asked for this complaint to be considered by an ombudsman.

## **What I've decided – and why**

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 agree with our investigator that Mr B's complaint shouldn't be upheld for these reasons:

- Mr B's claim was made to Nationwide under section 75, which gives a consumer an equal right to claim against the supplier of goods or services or the provider of credit if there's been a breach of contract or misrepresentation by the supplier (provided that certain criteria set out in that section are met);
- Mr B's claim under section 75 is that the supplier was in liquidation so was unable to perform its contractual obligations and was in breach of contract, the product was mis-sold to Mr B and his wife and the supplier misrepresented the product, its benefits and pressured them into purchasing a product which was unsuitable and failed to provide the advantages promised;
- Mr B's client statement says that he and his wife were very disappointed with the standard that they received from the supplier as they were never able to access what they wanted and he wished that he'd never made the purchases but the sales presentation was very convincing;
- I'm not determining the outcome of Mr B's section 75 claim in this decision as only a court would be able to do that but I'm considering whether or not Nationwide's response to Mr B's claim was fair and reasonable in the circumstances;
- Mr B's representative's claim letter says that it was represented to Mr B and his wife that they would have access to additional features such as cheaper accommodation and luxury items such as concert tickets and restaurant meals (all at a discounted price) and that their existing holiday ownership product would be relinquished;
- the membership application agreement says that Mr B and his wife were acquiring: *"a concierge service providing its members with various services through [the supplier] and/or its listed associates"*; and: *"All current services and benefits are shown in Appendix A"* – but I've not been provided with a copy of Appendix A;
- Mr B says: *"Several times we asked [the supplier] for concert tickets but we were told that we were unable to get these, so had to purchase them separately. The same thing happened to us when we tried to purchase Pantomime tickets, as we were told that these did not qualify"*;
- I can understand Mr B's disappointment with the services that he and his wife received from the supplier but I'm not persuaded that he's provided enough evidence to show that the lifestyle concierge product was misrepresented or mis-sold to them;
- Mr B's representative says that the supplier represented that Mr B and his wife's existing holiday ownership product would be relinquished – but Mr B and his wife entered into a separate agreement with a holiday company in June 2016 and paid £555.40 for that product to be relinquished;
- I've seen no evidence to show that their holiday ownership product hasn't been relinquished, that the holiday company misrepresented the terms of the relinquishment to them or that it has breached its contract with them – and I'm not persuaded that the supplier misrepresented to them that their holiday ownership product would be relinquished;
- Mr B's representative says that the supplier went into liquidation in September 2019 so was unable to perform its contractual obligations and was in breach of contract;
- Mr B and his wife had to make a renewal payment each year for the services to continue – I've been provided with evidence to show that they made a renewal

payment of €194.17 in September 2017 and I've seen the renewal reminder letter that was sent to them in August 2018 but I've seen no evidence to show that they made a renewal payment in September 2018 or September 2019;

- I'm not persuaded that there's enough evidence to show that Mr B and his wife were entitled to receive services from the supplier in September 2019 when it went into liquidation so I'm not persuaded that the liquidation of the supplier is a breach of contract for which Nationwide would be liable in these circumstances under section 75 – and I'm not persuaded that there's enough evidence to show that there's been any other breach of contract by the supplier for which Nationwide would be liable under section 75;
- the membership application agreement says that the joining fee for the lifestyle concierge service: *"will not be refundable except in cases which are within the legal withdrawal period"*;
- Mr B phoned Nationwide about his claim in December 2020 but it said that it had been unable to evidence that it received any communication from Mr B's representative to request for a dispute to be raised and it asked him to provide evidence in support of his claim – but I've seen no evidence to show that Mr B or his representative provided the required evidence to Nationwide for it to consider his claim;
- I consider that the final response that Nationwide sent to Mr B in December 2020 was a fair and reasonable response in these circumstances; and
- I sympathise with Mr B for the issues that he and his wife have had with their lifestyle concierge product but I find that it wouldn't be fair or reasonable for me to require Nationwide to refund to him any of the money that he's claimed, to pay him any compensation or to take any other action in response to his complaint.

### **My final decision**

My decision is that I don't uphold Mr B's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 4 October 2023.

Jarrold Hastings  
**Ombudsman**