

The complaint

Mr H complains that National Westminster Bank Plc (“NatWest”) didn’t uphold her claim under section 75 of the Consumer Credit Act 1974 (“CCA”) in relation to payments she made using her credit card to purchase a timeshare product.

What happened

In or around August 2017, while using her existing timeshare product, Mrs H agreed to meet with the timeshare supplier (who I’ll refer to as “L”). During that meeting, Mrs H agreed to trade in her existing timeshare holdings and purchase 84,000 new points in a timeshare product with L. These enabled her to use them to book holiday experiences and accommodation from a portfolio offered by L. In addition to the points traded in, a price was agreed of £5,595 for the upgrade. This was funded with an initial payment of £1,400 from a credit card in Mrs H’s sole name provided by NatWest. This was followed by 10 further payments of £381.36 using the same credit card.

In or around December 2022, using a professional representative (“the PR”), Mrs H submitted a claim to NatWest under section 75 of the CCA (“S75”). The PR alleged that L had misrepresented the product points purchased to Mrs H. And it was those misrepresentations that had persuaded Mrs H to agree to the purchase. In particular, the PR alleged L told Mrs H the purchase would provide:

- a higher category of membership;
- access to better benefits;
- access to more preferential bookings.

Further, the PR said that L had pressured Mrs H to enter into the agreement.

In response, NatWest asked the PR to provide evidence of any alleged misrepresentation or breach of contract by L. But this wasn’t forthcoming. So, in the absence of any further supporting evidence, NatWest were unable to consider Mrs H’s claim further.

Unhappy with NatWest’s response, the PR referred matters to this service as a complaint. So, this service contacted NatWest who confirmed that although a claim had been received, no complaint about its outcome had been raised. They agreed to investigate this further. Having done so, NatWest provided a response to Mrs H’s complaint. They didn’t think they’d done anything wrong in not considering her claim further. But they said they would reconsider Mrs H’s claim should evidence be provided to support it.

The PR didn’t agree with NatWest’s response. So, one of this service’s investigators considered all the information and evidence available. Having done so, they couldn’t find any evidence to support any alleged misrepresentations either. So, didn’t think NatWest’s response was unfair or unreasonable.

The PR didn’t agree with our investigator’s findings suggesting they’d failed to consider Mrs H’s S75 claim properly. They referenced the (alleged) experiences of other consumers when purchasing products from L together with their own interpretation of L’s actions and practices, and how they believe L breached the regulations that applied. The PR also provided details of products Mrs H had previously purchased from L and included further allegations, not previously included in the claim submitted to NatWest.

As an informal resolution couldn't be achieved, Mr N's complaint was passed to me to consider further. Having done that, I was inclined to reach the same outcome as our investigator. But I'd considered a number of issues which may not have been fully addressed or explained previously. So, I issued a provisional decision on 14 March 2024 giving both sides the chance to respond before I reached my final decision.

In my provisional decision, I said:

Relevant considerations

When considering what's fair and reasonable, DISP¹ 3.6.4R of the FCA² Handbook means I'm required to take into account; relevant law and regulations, relevant regulatory rules, guidance and standards and codes of practice; and, where appropriate, what I consider was good industry practice at the relevant time.

S75 provides consumers with protection for goods or services bought using credit. Specifically, where there's evidence of misrepresentation or breach of contract. Mrs H paid for the timeshare product using her NatWest credit card. So it isn't in dispute that S75 applies here. This means Mrs H is afforded the protection offered to borrowers like her under those provisions. And as a result, I've taken this section into account when deciding what's fair in the circumstances of this complaint.

It's important to distinguish between the complaint being considered here and the legal claim. The complaint this service is able to consider specifically relates to whether I believe NatWest's response to Mrs H's claim was fair and reasonable given all the evidence and information available to me, rather than actually deciding the legal claim itself.

It's also relevant to stress that this service's role as an Alternative Dispute Resolution Service ("ADR") is to provide mediation in the event of a dispute. While the decision of an ombudsman can be legally binding, if accepted by the consumer, we don't provide a legal service and this service isn't able to make legal findings – that is the role of the courts. Where a consumer doesn't accept the findings of an ombudsman, this doesn't prejudice their right to pursue their claim in other ways.

Where evidence is incomplete, inconclusive, incongruent or contradictory, my decision is made on the balance of probabilities – which, in other words, means I've based it on what I think is more likely than not to have happened given the evidence that's available from the time and the wider circumstances. In doing so, my role isn't necessarily to address in my decision every single point that's been made. And for that reason, I'm only going to refer to what I believe are the most salient points having considered everything that's been said and provided.

The Complaint

To provide clarity, it appears the PR submitted a claim to NatWest under S75 in August 2022 – not a complaint. This was a legal claim for alleged misrepresentations by L which NatWest may have joint liability for under S75.

A legal claim doesn't fall under the DISP rules. So, prior to the PR referring Mr H's claim to this service, I can't see that any complaint about the outcome of her claim had been made to NatWest at any time. It was at this point that NatWest agreed to investigate the complaint referred to them by this service.

NatWest subsequently provided a response to that complaint and confirmed they didn't believe they'd made any mistake or error in the way they'd handled Mrs H's claim. And as explained above, this service's role is to decide whether NatWest's

¹ Dispute Resolution: The Complaints sourcebook (DISP)

² Financial Conduct Authority

response to that complaint was fair and reasonable given the information and evidence available.

Was the timeshare product misrepresented?

For me to conclude there was misrepresentation by L in the way that has been alleged, generally speaking, I would need to be satisfied, based on the available evidence, that L made false statements of fact when selling the timeshare product. In other words, that they told Mrs H something that wasn't true in relation to the allegations raised. I would also need to be satisfied that any misrepresentation was material in inducing Mr H to enter into the contract. This means I would need to be persuaded that she reasonably relied upon false statements when deciding to buy the timeshare points.

From the information available, I can't be certain about what Mr H was specifically told (or not told) about the benefits of the product she purchased. It was, however, indicated that she was told these things. So, I've thought about that alongside the evidence that is available from the time.

Importantly, whilst the claim details the alleged representations made by L, I can't see that it provides any explanation of how they were supposed to have been misrepresented or breached. And I also haven't seen any evidence that demonstrates the features described by L were misrepresented or not provided at all.

Given my findings above, I haven't seen anything that persuades me NatWest's response to Mrs H's claim was unfair or unreasonable. And the fact that they've said they're willing to revisit the claim – should evidence be provided – is, in my opinion, not an unreasonable response.

The pressured sale and process

The claim suggests Mrs H was pressured into entering into the purchase contract. But this isn't something that would constitute misrepresentation or a breach of contract under S75. However, I acknowledge what the PR have said about this and have thought about the allegation further in reaching my decision.

I can understand why it might be argued that any prolonged presentation might have felt like a pressured sale – especially if, as Mrs H approached the closing stages, she was going to have to make a decision on the day in order to avoid missing out on an offer that may not have been available at a later date.

Against the straightforward measure of pressure as it's commonly understood, I find it hard to argue that Mrs H agreed to the purchase in 2017 when she simply didn't want to. I haven't seen any evidence to demonstrate that she went on to say something to L, after the purchase, suggesting she'd agreed to it when she didn't want to. And neither the PR nor Mrs H have provided a credible explanation for why she didn't subsequently seek to cancel the transaction within the 14-day cooling off period permitted within the purchase agreement.

If Mrs H only agreed to the purchase because she felt pressured, I find this aspect difficult to reconcile with the allegation in question. I haven't seen anything substantive to suggest she was obviously harassed or coerced into the agreement. And because of that, I'm not persuaded that there's sufficient evidence to demonstrate that Mrs H made the decision to proceed because her ability to exercise choice was – or was likely to have been – significantly impaired contrary to the Consumer Protection from Unfair Trading Regulations 2008 ("CPUT").

Other considerations

In response to our investigator's findings, the PR argue that they had failed to assess Mr H's S75 claim properly. But as I've already said, this service can't decide legal

claims. Only whether NatWest's treatment and response to it appears fair and reasonable. NatWest have been clear that they're still prepared to reconsider Mrs H's claim subject to the provision of evidence and supporting documentation. But as I can't see that either the PR or Mrs H have provided that to them, I don't think NatWest's current stance is unreasonable.

Further, the PR reference, what is said to be, the experience of other consumers when agreeing to the purchase of products from L. But I can't see that this is evidentially supported or how those comments and allegations help in establishing the facts of what happened in Mrs H's specific circumstances.

I'm also mindful that the PR's response to our investigator's view makes further new and additional allegations. It also appears that their response includes reference to a different financial business and another timeshare provider at times. And reference to our investigator's findings appears to detail comments and findings that I can't see our investigator actually said or included.

Ultimately I can only consider whether NatWest's treatment and assessment of the claim submitted was fair and reasonable. And given the new and additional allegations didn't form part of that claim, I don't think it would be fair or reasonable for me to consider those further when deciding Mrs H's complaint here.

Summary

I would like to reassure Mrs H that I've carefully considered everything that's been said and provided. I realise she will be extremely disappointed, but I haven't seen anything that persuades me that NatWest's response to her claim so far has been unfair or unreasonable. I think they've been very clear about what they need to consider her claim further. Because of that, and for the reasons above, I don't currently intend to ask NatWest to do anything more here.

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.

NatWest haven't acknowledged receipt of my provisional decision or provided any further comment or evidence for consideration. The PR said they'd received my provisional decision and having shared it with Mrs H, have nothing to add.

In the circumstances, and with nothing new to consider, I've no reason to vary from my provisional findings. So, I won't be asking NatWest to do anything more here.

My final decision

For the reasons set out above, I don't uphold Mrs H's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H to accept or reject my decision before 3 May 2024.

Dave Morgan
Ombudsman