

The complaint

Mr V complains that he was misled into buying a suite of holiday products and that they are no longer available. Because he paid for them in part using a credit card issued by Tesco Personal Finance PLC ("Tesco Bank") he says that is liable in the same way as the supplier.

Mr V has been represented by a claims management business, so when I refer to his arguments and submissions I include those made on his behalf.

What happened

In July 2011 Mr V bought a package of holiday and leisure products from Club Class Services Sarl, a company registered in Gibraltar. It changed its name shortly afterwards to Club Class Sarl. Mr V says the package included:

- indefinite membership of Club Class Prestige, administered by Club Class plc, a Seychelles company;
- membership of Leisure Alliance Promotions, administered by Leisure Alliance plc, also registered in the Seychelles; and
- a cashback voucher, administered by Cashback Europe Ltd, a Gibraltar company.

Mr V paid part of the purchase price with his Tesco Bank credit card to Imagen Sinergica SL, and the balance by bank transfer.

In October 2012 Club Class plc was wound up. Mr V says that he was unable after that to use his Club Class membership and that there was therefore a breach of contract.

Mr V says he was told that he would receive a cashback voucher worth £6,230, which he could redeem after three years. That was not true, and Mr V says that he therefore has a claim in misrepresentation.

In February 2017 Leisure Alliance plc was wound up. Mr V says he was therefore no longer able to use the benefits of that membership, a further breach of contract.

When Mr V put these claims to Tesco Bank, in May 2019, it initially said that they were out of time because Imagen Sinergica SL had ceased trading more than six years earlier. Mr V referred the matter to this service.

One of investigators considered what had happened and agreed that there had been a breach of contract and that, under section 75 of the Consumer Credit Act 1974, Mr V could bring that claim against Tesco Bank. The investigator recommended a full refund of the contract price and interest. Tesco Bank did not agree with the investigator's assessment and asked that an ombudsman review the case.

I did that and, because I did not agree with the investigator's preliminary assessment, issued a provisional decision, in which I said:

Relevant legislation

Section 75(1) of the Consumer Credit Act provides:

If the debtor under a debtor-creditor-supplier agreement falling within section 12(b) or (c) has, in relation to a transaction financed by the agreement, any claim against the supplier in respect of a misrepresentation or breach of contract, he shall have a like claim against the creditor, who, with the supplier, shall accordingly be jointly and severally liable to the debtor.

Section 12 says:

12 Debtor-creditor supplier agreements.

A debtor-creditor-supplier agreement is a regulated consumer credit agreement being—

...

(b) a restricted-use credit agreement which falls within section 11(1)(b) and is made by the creditor under pre-existing arrangements, or in contemplation of future arrangements, between himself and the supplier

...

And section 11(b) says:

11 Restricted-use credit and unrestricted-use credit.

(1) A restricted-use credit agreement is a regulated consumer credit agreement—

...

(b) to finance a transaction between the debtor and a person (the "supplier ") other than the creditor

...

Was there a debtor-creditor-supplier agreement?

In this case Mr V's contract was with Club Class Services Sarl, but the credit card payment was made to a different company, Imagen Sinergica SL.

Section 75 of the Consumer Credit Act can however still apply if payment is made to an "associate" of the supplier, as defined in section 184. Mr V has provided evidence that the owner of Imagen Sinergica SL was the sole director of Club Class Services Sarl. That would make the companies associates of each other. In the absence of evidence to the contrary, I have therefore considered the claims made.

Misrepresentation

A misrepresentation is, in very broad terms, a statement of law or of fact, made by one party to a contract to the other, which is untrue and which induces the other party into the contract.

Mr V says he was told that he would be able to redeem a cashback voucher after three years and would receive a payment of £6,320 from Cashback Europe Ltd. In fact, the conditions attached to the voucher were so onerous that only a small number of voucher holders were ever paid; Mr V was not one of them.

However, under the Limitation Act 1980 an action (that is, court action) based on contract

(which includes claims for misrepresentation) cannot generally be brought after six years from the date on which the cause of action accrued.

Any statements about the cashback voucher and the likelihood of receiving a refund would have been made in or around August 2011. Mr V did not however raise any claim with Tesco Bank until March 2019, nearly eight years later – and nearly five years after he would have found out that no payment was to be made. I think it very likely therefore that a court would conclude that any claim for misrepresentation was made outside the time limit in the Limitation Act.

Breach of contract

Mr V has referred to two events which he says give rise to a claim for breach of contract. They are:

- the winding up of Club Class plc in October 2012; and*
- the winding up of Leisure Alliance Plc in February 2017.*

In respect of the winding up of Club Class plc, any cause of action would have accrued in or soon after October 2012. It is likely therefore that, by the time Mr V made his claim against Tesco Bank in March 2019, any action in respect of that would have been out of time under the Limitation Act. Even if that were not the case, it appears that there was an agreement between Club Class plc and Leisure Alliance plc by which the latter agreed to take on the liabilities of the former. I have seen a copy of that agreement and of a template letter to members informing them of that.

Be that as it may, there is in my view a more fundamental issue which I need to consider, namely the terms of Mr V's contract with Club Class Services Sarl / Club Class Sarl. What was it that that company agreed to provide, and did it fail to provide it?

The agreement that Mr V signed is fairly short and comprises a Membership Application and the Club Class plc Terms and Conditions of Membership. There is also a reference to annexes. The terms and conditions say:

- The purchase contract is with Club Class Services Sarl (clause 1).*
- The membership is administered by Club Class plc (clause 2).*

And clause 13 said:

"I/we understand that Club Class Services (sarl) is an independent intermediate [sic] for Club Class. Club Class Plc is solely responsible for the redemption of the membership you have purchased. Any disputes regarding your membership will be between the purchaser & Club Class Plc. Club Class Services (sarl) accepts no liability with regard to the fulfilment of member's entitlements."

In my view, therefore, it was clear that the seller's obligation was to sell the membership; but a different company, Club Class Plc, was to provide the benefits and services associated with that membership. There is no suggestion that Club Class Services Sarl did not arrange for the membership to be provided to Mr V.

It may well be that the two companies were linked, but that is not enough to enable Mr V to pursue a claim for breach of contract against both of them.

For these reasons, I am not persuaded that Mr V could successfully bring a claim against Club Class Sarl. It follows that it would not be fair to require Tesco Bank to meet the claim he has made.

Tesco Bank accepted my provisional findings, but Mr V did not respond to them. I have therefore reviewed the case in full.

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.

As neither Tesco Bank nor Mr V has had anything to add in response to my provisional decision, I see no reason to reach a different conclusion. In saying that, however, I stress that I have reviewed the entire case afresh.

My final decision

For the reasons I have indicated, my final decision is that I do not uphold Mr V's complaint and do not require Tesco Personal Finance PLC to do anything more to resolve it.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr V to accept or reject my decision before 22 November 2023.

Mike Ingram

Ombudsman