

## **The complaint**

Mr and Mrs P complain that they were mis-sold holiday and timeshare products when they were on holiday in Tenerife. Because Mr P used his credit card, issued by National Westminster Bank Plc, to pay part of the purchase price, he says that he has a claim against it in the same way as he has a claim against the seller.

Mr P has been represented by a claims management business, so where I refer to his submissions, I include those made on his behalf.

## **What happened**

In November 2014 Mr and Mrs P were on holiday in Tenerife. They say that they were approached by someone with a scratch card, who told them they had won champagne and a free holiday. They were invited to a presentation, where they would collect their prize.

The presentation lasted several hours. Mr and Mrs P say they were reluctant to make a purchase and they had no means of payment. The selling company however took Mr P back to their apartment so he could collect his credit card.

At the end of the presentation Mr and Mrs P entered into an "Accommodation Agreement" with Agentes Canarios SL, a Spanish company. Under the agreement Mr and Mrs P bought one week's accommodation in the Hotel Flamingo and a further four weeks' accommodation in one or more of the establishments run by A Vacation in the Sun. The holidays had to be used within 12 months of the contract date – that is, by no later than 16 November 2015. Mr and Mrs P paid €4,100 using Mr P's credit card.

Mr and Mrs P returned to Tenerife in August 2015, where they attended a further presentation. This time, they bought a timeshare interest and membership of the Grand Holidays Club at Atlantic Gardens, Lanzarote, for €7,000, along with a subscription to Interval International, a timeshare exchange organisation. These arrangements meant that they had the use of identified accommodation for a fixed week, although they could exchange it. I understand that was their plan, since Mr and Mrs P wanted to stay at the Hotel Flamingo, rather than at Atlantic Gardens. The agreement was with Fuerteventura Life SL, a Spanish company.

At the same time, Mr and Mrs P paid €2,000 for a two-week holiday for two with A Vacation in the Sun. The invoice was issued by Agentes Canarios SL.

In April 2016 Mr and Mrs P were told that there had been an administrative error, which meant they had been allocated the wrong timeshare week. They agreed to the change, and a new contract was issued, this time in the name of Canarias Costa y Sol SLU.

Mr and Mrs P have explained the difficulties they have had since then. They say they have been unable to book the holidays they were told they could book or otherwise benefit from the timeshare purchase in the way they expected. They contacted NatWest in or about March 2021 to say that they believed that they had been misled and that there had been a

breach or breaches of contract. Because they paid using Mr P's credit card, they said that NatWest was responsible, along with the seller.

NatWest considered what Mr and Mrs P had said, but did not agree that it was responsible. It said that the card payment had been made to AC Flamingo, not the seller, and so the necessary links were not in place to make it, as the card issuer, responsible. And it said that any claim had arisen more than six years previously and so had been made outside the relevant limitation period.

Mr and Mrs P did not agree. They said that the relevant time limit started when they became aware they had cause for complaint. That was not until 2016, so the claim had been made in time.

Mr and Mrs P referred the matter to this service. Our investigator however broadly agreed with bank that any claim would be outside the relevant time limit and so did not recommend that the complaint be upheld. Mr and Mrs P asked that an ombudsman review the case.

I did that and issued a provisional decision, inviting the parties to make further submissions if they wanted to do so. In my provisional decision, I said:

#### **Section 75 of the Consumer Credit Act 1974**

*One effect of section 75(1) of the Consumer Credit Act is that a customer who has a claim for breach of contract or misrepresentation against a supplier can, subject to certain conditions, bring that claim against a creditor. Section 75(1) says:*

*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 includes:*

*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(1) includes:*

*(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*

*...*

*The arrangements under which suppliers are able to take credit card payments can be "pre-existing arrangements" within the meaning of section 12(1)(b). Even though there is generally no direct arrangement between the supplier and the card issuer, the link provided by the card scheme (in this case, Mastercard) is in many cases sufficient. That will not always be the case, however.*

*In this case, the credit card payment financed the November 2014 contract with Agentes Canarios SL.*

*NatWest has noted that the payee named on Mr P's credit card statement was not the supplier, Agentes Canarios SL; it was AC Flamingo. It follows that the payment was not made under pre-existing arrangements with the supplier, but under arrangements with a different company. The bank says that section 75 of the Consumer Credit Act does not therefore apply.*

*Section 75 can however apply where a transaction is financed under arrangements between the creditor and an associate of the supplier. Under section 184 a company is an "associate" of another if, in very broad terms, they come under the same control.*

*I have not been provided with any information about the ownership or control of either Agentes Canarios SL or AC Flamingo (which I assume in any event is a trading name). I am not therefore currently persuaded that they are associates or that section 75 could apply here. It is possible however that further evidence will show a link, so I have considered what the position might be if it does.*

*As I have indicated, however, the credit card payment financed only the November 2014 contract. It did not finance the August 2015 timeshare purchase or the 2016 changes to that agreement. I have considered therefore only Mr P's claims in respect of the 2014 purchase.*

### ***Breach of contract and misrepresentation***

*A claim for breach of contract arises where one party to a contract does not do what they have agreed to do, and the other party suffers loss as a result.*

*As a matter of English law, a misrepresentation is, broadly speaking, a statement of fact or law made by one party to a contract, which (i) is untrue and (ii) induces the other into the contract.*

*The contract here was expressly governed by Spanish law, but I have approached this provisional decision on the assumption that Spanish law is not materially different from English law, at least insofar as it relates to Mr P's complaint. The parties can tell me in their response to this provisional decision if they believe there are material differences. Section 75(1) of the Consumer Credit Act applies to overseas contracts.*

*Mr P's allegations in this case appear primarily to relate to events connected with the purchase of the timeshare unit in August 2015. But NatWest did not finance that purchase. I will therefore discuss in detail only the November 2014 contract.*

*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 which might have induced Mr and Mrs P into the November 2014 contract were made on or before 16 November 2014. They did not however raise any complaint with NatWest until around March 2021, just over six years later. 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.*

*Mr P says that the relevant time limit runs from the date on which he knew he had cause for complaint. That is true of the time limits which apply to the Financial Ombudsman Service. His complaint about NatWest – that it wrongly declined his claim under section 75 – was*

*therefore referred to this service in time. But any claim in misrepresentation against Agentes Canarios SL was already out of time by the time it was referred to the bank. And a creditor against which a section 75 claim is made can generally rely on any defence which would have been available to the supplier. That includes a limitation defence.*

*Again, I have approached this issue on the assumption that limitation periods under Spanish law are the same as they are under English law, but the parties can tell me if they are different.*

*The time limit for bringing a claim for breach of contract is also six years from the date on which a cause of action arose. The cause of action arises however on the date of the breach – which will very often be after the date of the contract.*

*Mr P has not alleged any breach of the November 2014 contract. As I have indicated, he and Mrs P bought a week's accommodation at the Hotel Flamingo and four further weeks in accommodation to be arranged. It appears however that they only used the first week – in August 2015, when they bought the timeshare unit. They have not explained however why they did not use the remaining weeks within 12 months of signing the contract. It has not been suggested however that Agentes Canarios SL refused to provide those weeks or that Mr and Mrs P tried to book them. I will however consider any further evidence on this matter before I issue my final decision.*

## **Conclusions**

*It is not for me to say whether Mr P has a valid claim for breach of contract or misrepresentation or whether in turn he has a claim against NatWest under section 75 of the Consumer Credit Act. Nor is it for me to say if any such claims would now be time-barred under the Limitation Act. They are however matters which I must take into account in deciding what's fair and reasonable in all the circumstances. My current view however is:*

- I am not currently persuaded that the necessary arrangements existed to give rise to a claim against NatWest under section 75 of the Consumer Credit Act.*
- Section 75 can only apply, if at all, to the November 2014 contract.*
- Any claim for misrepresentation in connection with that contract is likely to be out of time under the Limitation Act.*
- Mr P has not raised a claim for breach of the November 2014 contract.*
- It follows that the bank's response to the claim under section 75 was reasonable.*

Neither party provided any further evidence or arguments in response to my provisional decision. I therefore have no more information about:

- any link between Agentes Canarios SL and AC Flamingo;
- Spanish law and limitation periods; or
- why Mr and Mrs P didn't use the additional weeks they had paid for under the 2014 contract.

## **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.

In the circumstances, there is no reason in my view for me to reach a different conclusion from that set out in my provisional decision. Having reviewed the case in full, I remain of the view that NatWest's response to the claims made was reasonable.

### **My final decision**

For these reasons my final decision is that I do not uphold Mr P's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 8 November 2023.

Mike Ingram  
**Ombudsman**