

The complaint

Mr T complains that The Co-operative Bank plc, trading as Co-op Bank, won't refund to him the money that he paid for some holiday club membership points. He's being represented in his complaint by a claims management company.

What happened

Mr T and his wife had some holiday club membership points and they entered into a purchase agreement to trade-in those points for some membership points in a different holiday club from the holiday company in February 2016. They also agreed to pay a net purchase price of £4,700 which Mr T paid using his Co-op Bank credit card in March 2016.

Mr T's representative made a claim to Co-op Bank under section 75 of the Consumer Credit Act 1974 in February 2019. It said that the holiday product was mis-sold to Mr T and his wife by the holiday company and, but for the misrepresentations made to them, they wouldn't have purchased it and it provided a witness statement from Mr T.

Co-op Bank said that for Mr T to have a valid claim under section 75 he must show that payment was made directly to the supplier (or an associate of the supplier) but his payment was made to another party, so he had no claim against it under section 75. It also said that there's a requirement to provide evidence to support the claim. Mr T's representative said that the supplier and the other party were associates so Mr T did have a claim under section 75. Mr T wasn't satisfied with Co-op Bank's response so a complaint was made to this service.

Our investigator didn't recommend that Mr T's complaint should be upheld because he didn't think that Co-op Bank's decision to turn down his claim was unfair or unreasonable. He said that he hadn't seen any evidence to support Mr T's claim that the membership was misrepresented so he wasn't persuaded that there was a misrepresentation at the time of sale. He wasn't persuaded that the holiday company hadn't provided Mr T and his wife with something that they were contractually entitled to so he didn't think that it had breached the contract. As he didn't think that Co-op Bank's decision to decline Mr T's section 75 claim was unfair he said that he hadn't decided whether there was a debtor-creditor-supplier relationship.

Mr T's representative, on his behalf, has asked for this complaint to be considered by an ombudsman. It says, in summary and amongst other things, that:

- verbal misrepresentations were intentionally used by the sales representatives to create the argument of relying on written versus verbal representations;

- Mr T is happy to provide a sworn statement to confirm the verbal representations made to him at the time of sale;
- the purchase agreement shows that their existing 65,000 points were traded but Mr T and his wife continued to receive management fee demands from that holiday company and had to engage its services to rescind the contract;
- it has referred to a decision issued by this service in which it was found that the consumer's verbal submissions were credible;
- the holiday company made verbal representations to Mr T and his wife at the point of sale about the nature, extent and benefits of the holiday product and the material characteristics of the product were misrepresented to them so they were induced to make a transactional decision that they wouldn't normally have made based on those misrepresentations; and
- Mr T has advised that it was represented to him and his wife that by making the purchase the holiday company would take over their existing holiday product and end their liability but, when he engaged its services, they were still under the original contract and the holiday company hadn't fulfilled the promise made to Mr T and his wife.

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 T's complaint shouldn't be upheld but for these reasons:

- Mr T paid for the membership points in March 2016 using credit provided by Co-op Bank and section 75 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);
- I'm not determining the outcome of Mr T's claim under section 75 as only a court would be able to do that but I'm considering whether or not Co-op Bank's response to his claim was fair and reasonable in the circumstances;
- Mr T and his wife signed the purchase agreement in February 2016 and they also initialled the notice of withdrawal form that they could use to withdraw from the agreement within 14 days without giving any reason – I consider it to be more likely than not that they would also have signed other documents at that time relating to their purchase of membership points but I've not been provided with any other documents, including the schedules to the purchase agreement which are referred to in the purchase agreement;
- Mr T and his wife traded-in their 65,000 membership points in another holiday club and agreed to pay £4,700 for 65,000 membership points in the holiday club – the purchase agreement says: *"The Purchaser hereby trades in to the Vendor all rights in his title indicated below, including responsibility for the management charges/maintenance fees. In return the Purchaser receives [points in the holiday company] for which he is liable to pay the points fees. The Purchaser further understands that all Traded Accommodation is subject to verification of the point's value attributed to it and confirmation of title"*;
- the holiday company had agreed to accept the traded-in points and to become responsible for the management charges and maintenance fees – and Mr T says that

he and his wife were told that the holiday company would take over those points and that, after five years, they would be able to leave the system without any penalties – but he says that it hasn't taken over those points and they won't get out of the membership after five years;

- both Mr T's representative's letter to Co-op Bank in February 2019 and Mr T's complaint form say: *"The timeshare product was mis-sold to our client by the broker. But for the misrepresentations made to our clients, they would not have purchased the timeshare product"* and there was no reference in either of those documents to a claim for a breach of contract by the holiday company;
- as the holiday company had agreed in the purchase agreement to accept the traded-in points, I don't consider that Mr T and his wife were induced into entering into the agreement by a misrepresentation about the traded-in points but I've considered whether or not there's been a breach of contract by the holiday company;
- Mr T's representative says that the holiday company was to take control of the traded-in points but that didn't happen and Mr T and his wife continued to receive management fee demands relating to those points so engaged Mr T's representative to rescind the contract;
- any failure by the holiday company to accept the traded-in points and to become responsible for the management charges and maintenance fees could be a breach of contract by the holiday company but I've not been provided with any evidence of the management fee demands that Mr T and his wife have received or evidence to show whether or not the contract for those points has been rescinded so I'm not persuaded that there's enough evidence to show that there's been a breach of contract by the holiday company but, if there was a breach of contract and those points have now been rescinded, that may be an appropriate remedy for any breach of contract;
- Mr T says in his witness statement that he and his wife were told that: the holiday company would take over their existing points and, after five years, they would be able to leave the system without any penalties; they would have guaranteed availability for holidays by using an exchange programme (and they weren't told that they would need to pay for any additional fees); and they weren't made aware of any perpetuity clause in the agreement;
- Mr T's representative described in its February 2019 letter the misrepresentations that it said had been made to Mr T by the holiday company which were based on what Mr T had said in his witness statement;
- the purchase agreement says: *"The Vendor agrees to sell and the Purchaser agrees to buy Points in [the holiday club] upon and subject to the terms and conditions stated on this document and in the attached schedules"* – so Mr T and his wife had agreed to buy the points and there's no reference in the documents that I've seen which says that Mr T and his wife would be able to leave the club after five years without any penalties;
- if Mr T and his wife had been told that they would be able to leave the club after five years without any penalties, I consider that it would be reasonable to expect that to have been confirmed in writing – and, if that was an important consideration for Mr T and his wife, I consider that it would be reasonable to expect them to have asked the holiday company to confirm it in writing;
- the purchase agreement refers to an existing exchange membership programme and says that the documentation is available in English (as well as other languages) but I've not been provided with any documents relating to the exchange programme and I've seen no evidence to support Mr T's claim that he and his wife were told that they would have guaranteed availability for holidays by using the exchange programme or

that they weren't told that they would need to pay additional fees – I don't consider it to be likely that the holiday company would have said that Mr T and his wife would have *"guaranteed availability"*;

- the purchase agreement says: *"Fees received in connection to the associate membership of [the exchange programme] will be reverted to this organisation"*; and I'm not persuaded that it's likely that Mr T and his wife were told that they wouldn't have to pay any additional fees for using the exchange programme;
- I've not been provided with all of the documents relating to the points, I've not seen what Mr T refers to as a *"perpetuity clause"* and I haven't seen any provisions relating to the agreement ending – but I'm not persuaded that the holiday company not making Mr T and his wife aware of any perpetuity clause in the agreement would be a misrepresentation for which Co-op Bank would be liable under section 75;
- I'm not persuaded that there's enough evidence to show that the membership points were misrepresented to Mr T and his wife by the holiday company or that they were induced into entering into the purchase agreement by any such misrepresentations – nor am I persuaded that the membership points were sold to Mr T and his wife in February 2016 in a way that would cause Co-op Bank to have any liability to Mr T under section 75;
- as I'm not persuaded that there's been a misrepresentation, I consider that there's no need for me to make any finding as to whether there was the relevant relationship between the debtor, the creditor and the supplier in these arrangements that's required for a claim under section 75;
- although I sympathise with Mr T and his wife for the issues that they've had with their holiday club membership, I'm not persuaded that Co-op Bank's response to their section 75 was unfair or unreasonable; and
- I find that it wouldn't be fair or reasonable in these circumstances for me to require Co-op Bank to refund to Mr T any of the money that he paid for the membership points, 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 T's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 1 August 2023.

Jarrold Hastings
Ombudsman