

The complaint

Mr W complains that Allied Irish Banks Plc (“AIB”) didn’t fairly and reasonably handle his claim under the Consumer Credit Act 1974 (“CCA”) in relation to a payment he made using his credit card for the purchase of a timeshare product.

What happened

In or around December 2015, Mr W met with a representative of a timeshare supplier who I’ll refer to as “A”. During that meeting, Mr W told A he had an existing timeshare with another provider. But he had concerns about that timeshare and thought the standard of accommodation offered by A was better than that offered by his existing provider.

A offered to take Mr W’s existing timeshare product in exchange for the purchase of a timeshare product provided by them. Mr W agreed to proceed with completing the purchase at a total cost of £29,500. That cost was funded in part by a bank transfer of £8,850 from his personal bank account, with the balance of £20,650 funded under a loan agreement with another business.

In November 2019, using a professional representative (the “PR”), Mr W submitted a claim to AIB under section 75 of the CCA (“S75”). The PR said A had mis-sold the timeshare product to Mr W by misrepresenting the associated benefits and features. Further, they said A used aggressive and persistent sales tactics making Mr W feel pressured to complete the purchase. The PR thought A’s actions breached the various regulations that applied to the timeshare sale.

Having not received a response from AIB, the PR referred Mr W’s complaint to this service – that being that AIB had failed to respond to the claim submitted. They also said that as A “*are now in liquidation*”, they aren’t able to provide the service sold and are in breach of contract. They said Mr W had paid £950 for a “*Golden Week*” to be taken at any time of the year. Mr W said this purchase was presented as mandatory for the completion of the timeshare agreement. However, he’d since discovered that other timeshare owners hadn’t had to make such a purchase.

Following referral of the complaint to AIB by our investigator, they confirmed they hadn’t previously received the claim letter. So, they agreed to investigate Mr W’s claim. Having done so, AIB wrote to Mr W with their findings

. While they didn’t uphold his claim or complaint, they did request further information in order to establish whether the correct debtor-creditor-supplier (“DCS”) relationship existed to enable a claim to be made under S75.

Having looked into everything, our investigator didn’t think Mr W’s complaint should be upheld. They hadn’t seen anything to confirm what the payment of £950 was for. And while Mr W’s credit card statement evidenced the payment had been made, there was nothing within the timeshare contract documents provided to confirm what Mr W was entitled to as a result of that payment.

Mr W didn’t accept our investigator’s findings. In response, the PR explained why they thought the necessary DCS relationship existed. They also referred to another upheld complaint which had similar circumstances to Mr W’s.

Mr W emphasised that the purchase of the “Golden Week” was presented as a mandatory purchase. And he considered this “*deceptive & misleading*” and a crime under the Fraud Act 2006. He thought AIB had a legal and moral obligation to protect customers from fraud and they should reimburse him for his losses.

As an informal resolution couldn’t be reached, Mr W’s complaint has been passed to me to consider and come to a final decision.

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.

Relevant Considerations

When considering what’s fair and reasonable, DISP¹ 3.6.4R of the FCA 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 protection for consumers for goods or services bought using credit. Mr W says the payment made using his credit card related to the timeshare product he purchased. So, where evidence supports that to be the case, it’s not in dispute that S75 applies. This means that Mr W would be afforded the protection offered to borrowers like him under those provisions. And as a result, I’ve taken this section into account when deciding what’s fair and reasonable in the circumstances of this case.

It’s 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, it doesn’t prejudice their right to pursue any 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.

Does Mr W have a valid claim under S75?

S75 (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*” (emphasis added).

In order to link the credit card payment to the timeshare product transaction, I would need to see evidence of what it was the payment of £950 specifically related to. And, importantly, that it was contractually linked to the timeshare product transaction.

Mr W says the credit card payment of £950 formed part of the timeshare purchase agreement in as much as he was led to believe the associated purchase of a “Golden Week” was mandatory and a condition of that purchase. The difficulty I have is identifying what was

¹ The FCA’s Dispute Resolution: Complaints Sourcebook (“DISP”)

actually said at that time of the sale. So, I've thought about that alongside the evidence available.

Although not determinative of the matter, I haven't seen any documentation which supports Mr W's assertion. And although I've seen the purchase agreement, I've seen no marketing material or further detailed documentation from the time of the sale that echoes what he says he was told. So, I can't say, with any certainty, that A did in fact tell Mr W that the "*Golden Week*" purchase was mandatory. And because of that, I also can't reasonably conclude that the credit card transaction formed part of the timeshare product transaction. As a consequence, I don't believe Mr W has a valid claim under S75.

The DCS relationship

As I've already mentioned, under S75, a "debtor-creditor-supplier agreement" is a precondition to a claim under that provision. Mr W's credit card statement suggests the payment he made was to a different company rather than to A directly. I acknowledge the PR's assertions that the company receiving payment was sufficiently related to A to ensure that the DCS relationship remained intact.

The High Court's judgment in the case of *Steiner v National Westminster Bank PLC* [2022] considered a scenario, with similar circumstances, in order to establish the validity of the DCS relationship in that case. However, given the facts and circumstances of this complaint and my overall outcome with those in mind, I don't think it's necessary to make a formal finding on the DCS arrangement for the purpose of this decision. Because I don't think Mr W has a valid claim under S75 anyway.

Summary

Having considered all the information, I haven't seen anything that persuades me the payment Mr W made with his credit card formed part of the timeshare purchase transaction. And because of that, while I realise Mr W will be disappointed, it wouldn't be fair or reasonable for me to ask AIB to do anything more here.

My final decision

For the reasons set out above, I don't uphold Mr W's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 20 September 2023.

Dave Morgan
Ombudsman