

## **The complaint**

Mr S has complained that Allied Irish Banks Plc (“AIB”) has not honoured a liability he says arises out of a claim made under section 75 of the Consumer Credit Act 1974 (“CCA”).

## **What happened**

In November 2015, Mr S said he was called by someone who said they could help him recover money he had paid for a timeshare membership. But he was told that, to take advantage of this and for tax purposes, he’d need to travel to Tenerife to make the claim.

In February 2016, Mr S went to Tenerife and entered into a number of agreements with two different businesses, Luxury Leisure Group SL (“LLG”) and Travel Home & Adventure SL (“THA”). Mr S says this was for a number of things, including for LLG to make a claim on his behalf in relation to his timeshare membership and for it, and THA, to supply holiday and travel services. For these services, Mr S paid around £7,600, of which £301.64 was paid to THA using his AIB credit card.

In April 2021, Mr S made a claim to AIB under s.75 CCA. He said that the businesses he paid had gone into administration and he’d not got any of the services promised. He also said the businesses had misrepresented what they could offer to him. In short, he was told money would be recovered from claims that would be made on his behalf, but he didn’t think there was any intention to make any such claims. Mr S said that, under s.75 CCA, AIB needed to pay compensation for the claims he had for misrepresentation and breach of contract.

AIB responded to say it didn’t think it was liable to answer Mr S’s claim as there wasn’t evidence to show that THA was no longer trading, even if its website wasn’t working. Further, AIB said it wasn’t responsible to answer any claim about LLG as any agreement between Mr S and LLG wasn’t funded by the credit card.

Mr S responded to what AIB said and explained that everything had been sold to him in one meeting and it wasn’t clear to him that there was more than one business involved. But in any event, Mr S said the two businesses were registered to the same address and were clearly linked.

One of our investigators considered the complaint and thought AIB needed to do more to deal with Mr S’s claim. He thought that there was clearly an arrangement in place between Mr S, THA and AIB, as the credit card was used to make a payment to THA. That meant, AIB could be responsible to answer a s.75 CCA arising out of Mr S’s agreement with THA.

Our investigator noted that Mr S’s evidence was that everything had been sold to him in one meeting, so he concluded that everything was either sold by a representative of THA, or by a representative of LLG acting as an agent for THA. He went on to say that he thought there was a misrepresentation that Mr S was guaranteed a pay out following a claim arising out of an existing timeshare membership and that representation was the sole reason he entered into an agreement with THA. Finally, our investigator thought that the type of misrepresentation was such that Mr S was entitled to both rescind the THA contract and also

obtain damages that flowed from the misrepresentation. So he thought AIB needed to pay back everything Mr S had paid both THA and LLG.

Mr S agreed with what our investigator said, but AIB disagreed. It argued that Mr S's agreements with LLG were separate contracts and our investigator was wrong to say it was responsible to answer claims about them all. It also said that it hadn't seen evidence that Mr S was unable to use the holidays and services THA were meant to provide. AIB said it would refund the £2,574.47 paid to THA if Mr S was able to confirm that he didn't get anything from THA, but it wasn't prepared to refund anything paid to LLG. So AIB asked for the matter to be passed to an ombudsman for review.

I considered all of the evidence and arguments and came to a different conclusion to our investigator. So I issued a provisional decision and invited both parties to respond with any further evidence or arguments they wished me to consider before I issued a final decision.

I explained that when evidence is incomplete, inconclusive, incongruent or contradictory, I make my decision on the balance of probabilities – which, in other words, meant I based it on what I thought was most likely to have happened given the available evidence and the wider circumstances.

There was no evidence from LLG or THA, and the only evidence there was from the time of sale was from Mr S. He provided all of the documentation he had, along with his memories. So when considering this claim, that was the only evidence available. I was mindful that his memories may not be an accurate representation of the precise sales process as memories are imperfect. So I had to weigh all of that up when deciding what I thought most likely happened. I didn't think it was unfair to AIB for me to do this – ultimately I must decide the complaint in front of me based on the evidence available.

When considering this complaint, I thought it was important to set out what I found Mr S agreed to and with which business. I then considered any legal claims that AIB needed to consider, given the legal relationships between the parties. Finally, I considered whether AIB needed to do anything further to resolve this complaint.

#### Mr S's memories of the sale

Mr S provided a statement, setting out his memories of the sale and what led up to it. He explained that he was called in November 2015 by someone saying they were from a company that made claims for the recovery of money paid for timeshares. They said to Mr S that they'd be able to make a claim on his behalf, but for tax reasons, he would have to travel to Tenerife to make the claim. It was agreed that the company would arrange accommodation for him, meaning he could come to the office to start the claim. Mr S says no other potential services were discussed in the call.

Mr S explained that when he attended the meeting in Tenerife, he was told his claim was straightforward and money would be recovered. But then a person Mr S assumed was the owner of the business explained that as well as making claims, he ran a travel agency where customers could make large savings on holidays. This was also backed by a scheme in which customers made a payment to this business and it would be invested with a 12% yield. Mr S agreed to sign up to the offer, but when he came to make a booking the holidays offered were more expensive than others available online. After he questioned this, the businesses involved failed to respond and then appeared to disappear. It was Mr S's view that the whole thing was a scam.

Mr S has explained that he never received any money from a timeshare claim, nor was he able to use any of the other services he paid for.

After coming to our service, Mr S has confirmed he thought the misrepresentation made to him were about the claim that was going to be made on his behalf. He said it was a promise that there was a guaranteed claim that caused him to attend the meeting and take out the other products. Mr S also confirmed that the 12% return he talked about was the salesperson explaining how they could offer such good discounts on holidays, I couldn't see that Mr S ever thought he would make a return on the money he paid to THA and LLG.

### The available documents

Much of the documentation comes from the sale that took place on 12 February 2016 ("the Date of Sale"). I saw a number of different documents, each signed separately by Mr S. It was not entirely clear what they related to, so I set them out in some length and then I explained what I thought had happened.

Mr S provided an email he received from a business called "Orange Sun Travel" from November 2015. It said that Mr S was offered a week of accommodation in Tenerife and it read:

*"We will arrange an appointment with our Advisor in Tenerife, the process is as follows:*

- 1. You would expect to receive back exactly the original purchase amount, not one penny more or one penny less!*
- 2. The process would take a maximum of 60 days and once you have received the monies into a bank account of your choice, you will be asked to pay 20% for the services.*
- 3. A relinquishment would then follow which would eliminate any further financial commitment."*

There was a document on LLG headed paper called an 'Accommodation Contract' from the Date of Sale. An extract read:

*"Included in the initial subscription fee is 1 week of accommodation in Tenerife, and the choice of 1 week of accommodation in any of the Canary Islands."*

The reservation details showed that the 'Tourist Agent' was LLG and the price and other offers were agreed by LLG. The total price as £2,500 (€3,207.50) and it said payment was received on the Date of Sale.

Mr S was also given a letter on LLG headed paper from the Date of Sale to confirm that LLG would instigate a claim on his behalf for a total of £56,189. This letter stated that the claim would be settled in full and Mr S would be expected to pay back 20% of the claim. It read:

*"Please note, from registering the claim, to having the monies paid into our client account, will take a maximum of 60 days.*

*[LLG] is not a finance company, and is currently working with a third party firm of Solicitors, and various advisory companies, who specialise in reclaims, to enable us to offer our customers this intermediate service."*

I saw another document on LLG headed paper titled "Subscription for the Exclusivity of [LLG]" that set out that Mr S was to pay £5,000 by bank transfer. No further information as to what this was for was given. There was a further document on LLG headed paper from the Date of Sale that stated a further sum was due to LLG, totalling £4,960, which needed to be paid by 12 March 2016. LLG's bank details were given so a transfer could be arranged.

There was a document on THA headed paper that was called a "Subscription Application". It said:

*"[THA], referred to as the Vendor, a registered Spanish Company and authorised to represent and market in Europe, ..., are established under Law to allow members to access and participate in [THA] Credits Entertainment, Home and Leisure Reservation System based on the appropriate subscription.*

*The Applicant(s) hereby apply for Credits of [THA] and agree to use the credit currency applicable. The Applicant(s) hereby agree to pay the subscription fee specified and agree to be bound by the usage of [THA]. This agreement is subject to the Terms and Conditions on the second page and the Applicant(s) acknowledge they have read and understood in full."*

It said that a total of £2,500 (€3,207.50) was paid for this in two payments and was received on the Date of Sale. The subscription was described as a "One Time Only Subscription" and provided 1,000 credits. There was a set of terms attached but they don't explain how the scheme operated.

There was also a document titled 'Worldwide Holidays' that stated that Mr S would receive a free gift of five holidays, but it was not clear who was providing this to Mr S or what the terms of the offer were. It did say the week of accommodation in the Canary Islands had to be used before these were available, so I thought it was linked to the LLG accommodation contract detailed above.

Mr S also provided letters he wrote to THA and LLG in 2021 asking for a refund of what was paid as he thought the agreements had been breached.

#### What payments were made?

On the Date of Sale, Mr S paid THA £301.64 (being €384.90) using his AIB credit card.

On the Date of Sale, Mr S also paid £2,582.77 (€3,207.50) to LLG using a debit card, alongside a £1.25 non-Sterling transaction fee. And on the same day paid £2,272.83 (€2,822.60) to THA in the same method and with the same transaction fee.

A bank transfer was made to LLG on 14 March 2016 for £2,435. Mr S has said that was part payment to LLG for part of the deal and a further payment of £2,500 was due, but he never paid it.

#### What were the agreements?

I found that Mr S purchased accommodation from LLG, for one week in Tenerife and for one further week in accommodation on the Canary Islands. I thought that was paid for by the debit card payment to LLG on the Date of Sale as, although the Sterling amounts don't exactly correspond in the payment and contract, both payments were for the same amount in Euros.

Mr S also purchased something from LLG as detailed in the document titled "Subscription for the Exclusivity of [LLG]". It was not clear to me what this was for, but I thought it was for some sort of travel or holiday services. The contract price was £5,000 and I thought that was paid for, in part, with the bank transfer of £2,435 on 14 March 2016

I also thought LLG agreed to make a claim on Mr S's behalf in relation to an existing timeshare membership he held. It was not clear what that claim was actually for, but LLG

said Mr S would get a pay out within 60 days of the Date of Sale, which would be just over £56,000. In exchange, Mr S agreed to pay 20% of what was recovered to LLG.

Mr S also purchased services of some kind from THA, which appeared to be the purchase of 'credits' that could be used to buy things from THA. That was paid for by the two payments made to THA on the Date of Sale, one using the AIB credit card and one by debit card.

It wasn't clear to me whether the person Mr S spoke to, and who sold the agreements, was from LLG, THA or a representative of both (possibly from Orange Sun Travel). But Mr S entered into contractual relationships with both LLG and THA, so either the salesperson was from THA or they must have acted as THA's agent to enable the contract to be formed.

All of these agreements were entered into at the same time and at the same meeting, so to some extent they were linked in that there was nothing to suggest Mr S was offered these parts of the deal individually or that they could be purchased individually. But I couldn't see that the two businesses were all part of the same company, even if they were based at the same address.

#### Was AIB jointly responsible for any breach of contract or misrepresentation?

Section 75 CCA states that in certain circumstances, when a debtor has a claim against a supplier in respect of a misrepresentation or breach of contract, they will have a like claim against the creditor. So here, Mr S (the debtor) was asking AIB (the creditor) to answer his claims about what he said had gone wrong.

I noted that this doesn't apply to every claim Mr S may have. AIB would only be responsible for claims when there is a debtor-creditor-supplier ("DCS") agreement in place. This is set out more fully in s.11(b) and s.12(b) CCA, but in short, there have to be arrangements in place so that the supplier of goods or services is paid using the credit card. In Mr S's case, he paid THA directly with his credit card and it was not in dispute that AIB could be held jointly responsible for any claim of a breach of the contract with THA that arose from that transaction (the Subscription Application) or of a misrepresentation that led Mr S into entering into agreement with THA.

However, I didn't think AIB had to answer any claim for breach of contract by LLG. That was because anything supplied by that business was outside of the arrangements between Mr S, THA and AIB.

#### Did AIB properly consider the claims?

AIB initially said there was no evidence that there was a breach of the THA agreement, although I thought AIB may have accepted there was following our investigator's view. But I said I didn't need to make a finding on that issue as I thought there was a misrepresentation that AIB was liable to answer.

AIB needed to properly assess any claim for misrepresentation, here that the misrepresentation was fraudulent or negligent. The normal way to remedy any such claim would be rescission of the contract entered into and damages to put Mr S in the position he would have been in had the misrepresentation not been made. So I first needed to consider whether THA, and thereafter AIB, could be liable for a misrepresentation.

I couldn't see that Mr S made any allegation that THA misrepresented the nature of its contract to him, rather he said he never gained any benefit from it. However, I thought focusing solely on that was too narrow a way to look at the issue of misrepresentation. A misrepresentation about something outside of the contract can still be an actionable

misrepresentation if it induced someone to enter into the agreement. So I disagreed with AIB and I thought a misrepresentation about a service offered by LLG was something that could have induced Mr S to enter into an agreement with THA.

I thought a number of representations were made about how LLG could make a claim in respect of Mr S's timeshares. In particular it was said a claim would be made and that it would be paid within 60 days.

For there to be a misrepresentation there needed to be an untrue statement of fact or law made by one party to another, which induces the party receiving the statement to enter a contract, thereby causing them loss. A statement of opinion can be a misrepresentation if the opinion amounts to a statement of fact and it can be proved that the person who made it did not hold that opinion or could not reasonably have held it.

I thought that Mr S set out a number of things that could amount to misrepresentations. The specific things that were said would happen with any claim were clearly representations made to Mr S of things that LLG could cause to happen. But those were statements of fact that I didn't think were true. I thought the salesperson must have known LLG couldn't guarantee any payment of compensation, within a specific timeframe or at all, or that they had no reasonable grounds for believing it could do so. Any claim made to Mr S's timeshare provider was simply that, a claim, with no guarantee it would be paid or how much. Further, claims like that take time, so I thought it was fanciful to say that anything would be paid within 60 days. I couldn't see how the salesperson had any reasonable grounds to believe LLG could procure the outcome it said it would. It followed, I thought that amounted to a misrepresentation.

I also thought that representation was a continuation of what Mr S had been told earlier, as set out in the email he received in November 2015. I thought the only reason he attended the sales meeting in Tenerife was to make a claim and I couldn't see he had any other interest in purchasing any further holiday product. And I thought it was made by the salesperson as an attempt to persuade Mr S to take out the agreements he did with LLG and THA, that salesperson either being from THA or acting as its agent.

I thought about what would have happened had it not been misrepresented that LLG could get Mr S a sum of money within 60 days. I didn't think he would have entered an agreement with LLG to make a claim. But he also entered into other agreements with LLG and THA. I thought the central reason he entered into any of those agreements was the guarantee of a large sum of money in the near future from a claim – he had been clear that he was interested in exiting his timeshares, so I couldn't see he had any interest in the other holiday products offered in their own right. And had he known the reality that there was no guarantee of a successful claim, I didn't think he would have entered into any of the agreements.

It followed that, as there was a DCS agreement in place between Mr S, THA and AIB, I thought AIB needed to pay Mr S a sum equivalent to what he paid THA to enter into that agreement. However, as I noted before, I couldn't say whether the person selling the agreements to Mr S was from THA, LLG or from a third party. But as LLG wasn't paid using the AIB credit card, I said AIB couldn't be legally responsible for the misrepresentations of LLG or its agents. And as I couldn't say for certain in what capacity the salesperson was acting, I couldn't say that AIB's liability also extends to cover the amounts paid to LLG.

AIB didn't respond to my provisional decision.

Mr S responded with some arguments to say why he felt LLG and THA were connected. He said he dealt with one office at all times and with the same people. Both companies have ignored his attempts to contact them at the same time, vacating their offices and changing

their names. Mr S also said that the same person was in charge of both companies – “DLM”.

### **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 considered everything, I’m not going to depart from my provisional findings.

Before I set out my findings on what Mr S has said, I think it’s important to state that it is highly likely that LLG and THA are ‘linked’, given that their products were sold together by the same people from the same office. I’ve also considered what the position would be if the two businesses were associated (as set out in s.184 and s.187 CCA) through DLM being a director of both companies. But having done so, I still don’t think AIB needs to compensate Mr S for what he paid LLG.

Here Mr S entered into an agreement with THA and paid it directly using his credit card. That meant there was a DCS agreement in place in respect of the purchase of ‘credits’ from THA. Here the creditor (AIB), could be held jointly liable for any claim Mr S had against the supplier (THA) “*in relation to a transaction financed by the agreement*” (s.75 CCA). So the key issue here is which agreement was financed by the use of the AIB credit card, namely the purchase of THA ‘credits’.

If the companies were associated, it would mean that, had Mr S used his AIB credit card to pay THA for something LLG were providing, there may well have been a DCS arrangement in place to cover that specific transaction. However, the AIB credit card wasn’t used to finance any of the other agreements entered into between Mr S and LLG. So whether or not THA and LLG were associated doesn’t make a difference in this complaint.

Here the issue is that when Mr S was told that LLG would make a successful claim on his behalf, that statement was made by someone from LLG or acting on its behalf. But unless they happened to be from THA, I can’t say they were acting as THA’s agents at the specific time they were saying what LLG would do on Mr S’s behalf. It follows, I can’t say that AIB are responsible for the losses that flow from LLG’s actions and that it needs to pay more than I set out in my provisional decision.

### **Putting things right**

I direct AIB to pay Mr S a sum equivalent to what he paid LLG and THA. Those are:

- £301.64 on his credit card on 12 February 2016.
- £2,274.08 from bank account on 12 February 2016.

plus 8% per annum simple interest from the date of payment to the date of settlement.

### **My final decision**

I uphold Mr S’s complaint against Allied Irish Banks Plc and direct it pay compensation as set out above.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr S to accept or reject my decision before 16 February 2024.

Mark Hutchings

**Ombudsman**