

The complaint

Mr H complains that Oplo PL Limited won't refund to him the money that he paid to a holiday company for some membership credits. His wife is also involved in his complaint and he's being represented by a claims management company.

What happened

I understand that Mr H and his wife entered into a membership application agreement to buy some membership credits in November 2018. The purchase price of the credits was £12,246 and they also exchanged an existing holiday product. Mr H entered into a fixed sum loan agreement with a finance provider for a loan of £12,246 and he agreed to make 179 monthly repayments of £125.01 and a final payment of £124.35 to the finance provider.

Mr H's representative made claims, on Mr H's behalf, to the finance provider in May 2020 under sections 75 and 140A of the Consumer Credit Act 1974. It said that: the credits were mis-sold and misrepresented to Mr H and his wife; the contract between them and the holiday company was breached; commission was paid between the finance provider and the holiday company which wasn't disclosed to Mr H which created a breach of fiduciary duty and an unfair relationship; the loan agreement was unaffordable; and the holiday company had filed for liquidation and was unable to fulfil the contract.

The finance provider said that the liquidators were trying to appoint a new manager for the credits and that all timeshare commitments would be honoured. It didn't provide a substantive response to Mr H's section 75 claim but said that there was no commission arrangement between it and the holiday company and that it rejected and denied any allegations concerning an unfair relationship and breach of fiduciary duty. It also said that Mr H's loan application would have been subject to an affordability assessment, based on the information provided by him in his application form.

Mr H wasn't satisfied with its response so complained to this service. His complaint form says that: the holiday company and the finance provider failed to conduct a proper assessment of his ability to afford the loan; the finance provider paid a commission to the holiday company which wasn't declared to him and the holiday company unduly pressured him and his wife into entering into the purchase agreement and him into entering into the loan agreement; all rendering the loan agreement unfair pursuant to section 140A. The finance provider transferred Mr H's loan account to Oplo in August 2022.

Our investigator didn't recommend that Mr H's complaint should be upheld as he didn't think that the finance provider's decision to turn down Mr H's claims was unfair or unreasonable. He wasn't persuaded that there was a misrepresentation at the time of sale and he didn't think that Mr H's claim about a breach of contract should be upheld. He said that he hadn't seen enough to suggest that the relationship between Mr H and the finance provider was unfair and he wasn't persuaded that a court would reach the conclusion that the relationship was unfair. He didn't think that the lending was unaffordable at the time that the loan was made to Mr H, although he said that he appreciated that Mr H and his wife's financial circumstances appeared to have changed more recently.

Mr H's representative, on behalf of Mr H, has asked for this complaint to be considered by an ombudsman. Mr H says that he and his wife were told that it was exactly the same product as they had before, they wouldn't sign away nine months of summer holidays for three months of winter holidays and they were never given a copy of the contract to look through and hence the opportunity to cancel the contract.

Mr H's representative says that Mr H has explained that he and his wife understood their previous timeshare purchases to be investments that they would be able to sell in the future and that they were told that buying the credits was an investment with an opportunity to rent points and to re-sell them in the future but timeshares tend to be overvalued and there's no functioning resale market. It says that the holiday company breached the Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010, the terms of the contract are unfair and oppressive to Mr H and his wife, the holiday company had a significant advantage and the clauses contained within the contract are significantly in favour of it.

Mr H's representative has also raised its serious concerns about the way that the loan was sold to Mr H and it says that the holiday company didn't broker proper credit, the provision of finance was unfair and failed to reach the standard expected of a regulated firm, and Mr H has suffered harm as a result of the actions of both the holiday company and the finance provider. It has also provided a generic submission from counsel about *"various consumer complainants and providers of consumer credit for purchase of [credits from the holiday company]"*.

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 H's complaint shouldn't be upheld for these reasons:

- I understand that Mr H and his wife bought some credits from the holiday company in November 2018 but I've not been provided with a copy of the membership application agreement that they would have signed at that time – I have been provided with a copy of an annex to that agreement, the terms and conditions and the pre-contact credit information that have been signed by Mr H and his wife and I've also been provided with a copy of the loan agreement that was signed by Mr H – but I consider it to be likely that they would also have signed other documents in November 2018;
- Mr H's representative made claims to the finance provider in its May 2020 letter and Mr H then made a complaint to this service – the claim letter refers to claims under sections 75 and 140A, including that the credits were misrepresented to Mr H and his wife, but his complaint form only refers to claims under section 140A and doesn't refer to misrepresentations made by the holiday company;

- 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) and section 140A gives a court the power, amongst other things, to require a creditor to repay any sum paid by the debtor under a credit agreement if it determines that there's an unfair relationship between the debtor and the creditor;
- I'm not determining the outcome of Mr H's claims under sections 75 and 140A as only a court would be able to do that but I'm considering whether or not the finance provider's response to his claims was fair and reasonable in the circumstances;
- the May 2020 letter says that Mr H and his wife were advised that the product was of some substance but it's worthless and has no merit and that it was represented to them that the purchase would be an investment as the product would increase in value and they would be able to sell it at a considerable profit, which is untrue;
- neither Mr H nor his representative has provided a detailed account of the circumstances in which the alleged misrepresentations were made, the conversations that took place or the information that was provided to Mr H and his wife;
- I understand that the credits can be exchanged for a variety of vacations and experiences so I consider that the credits have some value and aren't worthless;
- Mr H says that he and his wife were told that the credits were exactly the same product as they'd had before but, given the nature of the credits and the way that they operated, I consider it to be unlikely that the holiday company would have said that the credits were exactly the same product as they had before;
- I've seen no evidence to show that Mr H and his wife were told that there was a functioning resale market for the credits, Mr H has confirmed that he and his wife haven't tried to sell their credits and I'm not persuaded that there's enough evidence to show that the holiday company represented to Mr H and his wife that the credits were an investment;
- I'm not persuaded that there's enough evidence to show that the credits were misrepresented to Mr H and his wife by the holiday company or that they were induced into entering into the membership application agreement by any such misrepresentations;
- the May 2020 letter also says that the holiday company has ceased to trade and has committed a repudiatory breach of contract and evidence has been provided to show that the holiday company went into liquidation;
- I consider that the liquidation of the holiday company would be a breach of contract for which Oplo would be liable under section 75, but I understand that a new management company has been appointed to provide the services in connection with the credits that Mr H and his wife had bought from the holiday company and I've seen no evidence to show that their use of the credits has been adversely impacted by the liquidation of the holiday company;
- I consider the appointment of the new management company to have been a suitable remedy for any breach of contract and I'm not persuaded that Mr H and his wife would be entitled to terminate the membership application agreement in these circumstances;
- Mr H's representative says that commission was paid between the finance provider and the holiday company which wasn't disclosed to Mr H which created a breach of fiduciary duty and an unfair relationship - but the finance provider says that there was no commission arrangement between it and the holiday company;

- I've not been provided with any evidence to show that the finance provider paid a commission to the holiday company and I'm not persuaded that there's been a breach of any fiduciary duty in these circumstances;
- Mr H's representative says that the loan agreement was unaffordable for Mr H and Mr H's complaint form says that the holiday company and the finance provider failed to conduct a proper assessment of his ability to afford the loan - but the finance provider says that Mr H's loan application would have been subject to an affordability assessment, based on the information provided by him in his application form;
- it has provided information from Mr H's application which shows that he had monthly pension income of £1,418 and that his wife was in full time employment with an annual income of £10,800 – it shows that they had monthly outgoings of £1,366.10 and other credit commitments of £91 each month;
- Mr H says that no questions were asked about his and his wife's income and expenditure but he also says that his wife was working at that time with a monthly income of around £1,000;
- I consider that the information that the finance provider has provided shows that it did conduct an assessment of the affordability of the loan for Mr H and I consider that it was reasonable for it to conclude at that time, based on the information that it had obtained from Mr H, that he could afford a loan with a monthly repayment of about £125;
- Mr H says that he and his wife weren't given a copy of the contract so didn't have the opportunity to cancel the contract – but they signed the pre-contract credit information and Mr H put his initials in a box to confirm that he'd: “... *seen and read the pre-contract and explanation documents ...*”; and the pre-contract credit information said: “*You have the right to withdraw from this agreement under section 66A of the Consumer Credit Act 1974, without giving a reason, by writing to [the finance provider]*”;
- I've seen no evidence to show that Mr H contacted the finance provider to withdraw from the loan agreement within the withdrawal period and the finance provider's account records show that it contacted him about arrears on his account in November 2019 and he said that he disputed the account but didn't give any further information (and the arrears were then cleared);
- Mr H was given a three month payment holiday in May 2020 as a result of the government imposed restrictions in response to the pandemic and he contacted the finance provider in September 2020, after the payment holiday had ended, and the accounts records show that he said that he couldn't afford the payment: “*due to being impacted by covid 19*”;
- Mr H provided an income and expenditure form in September 2020 which showed that his wife's income had reduced due to illness and that their credit commitments had increased – but the changes to their financial situation have occurred since the loan was made to Mr H and, at the time that the loan was made to him, I consider that it was reasonable for the finance provider to conclude that the loan was affordable for him;
- if he hasn't already done so, I suggest that Mr H explains his current financial situation to Oplo and it's required to respond to any financial difficulties that he's experiencing positively and sympathetically;
- Mr H's complaint form says that the holiday company unduly pressured Mr H and his wife into entering into the membership application agreement and Mr H into entering into the loan agreement – but if Mr H and his wife felt that they'd been unduly

pressured into buying the credits and didn't want to be bound by the agreement, I consider that it would be reasonable to expect them to have raised their concerns with the holiday company or the finance provider soon after they'd entered into the agreement;

- I've seen no evidence to show that Mr H complained about being unduly pressured until his representative's May 2020 letter to the finance provider – about 18 months later – and I'm not persuaded that there's enough evidence to show that Mr H and his wife were unduly pressured into entering into the membership application agreement, that Mr H was unduly pressured into entering into the loan agreement or that the holiday company used unacceptable sales practices against them;
- Mr H's representative has provided a generic submission from counsel about *"various consumer complainants and providers of consumer credit for purchase of [credits from the holiday company]"* and I've considered that submission which is made generally and doesn't make any specific reference to Mr H or the circumstances that led to the claims that he's made to the finance provider;
- Mr H's representative says that the terms of the contract are unfair and oppressive but I haven't been provided a copy of the membership application agreement that Mr H and his wife would have signed in November 2018 or copies of all of the other documents that I consider it to be likely that they would also have signed at that time;
- it would be for a court to determine whether any of the terms of those documents were unfair but I don't consider that the presence of an unfair (or potentially unfair) term alone is likely to mean that a court would conclude that it created an unfair relationship between a debtor and a creditor as the court would consider how the term operated in practice and whether the operation of that term caused the relationship to be unfair;
- I'm not persuaded that there's enough evidence to show that the terms of the documents have been applied or operated unfairly against Mr H and his wife and I consider it to be unlikely that a court would conclude in these circumstances that the terms of the documents created an unfair relationship between Mr H and his wife and the finance provider;
- I'm not persuaded that there's enough evidence to show that the holiday company has breached the Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010, that the loan was mis-sold to Mr H, that the holiday company didn't broker proper credit or that it or the finance provider failed to reach the standard expected of a regulated firm;
- I'm not persuaded that there's enough evidence to show that Mr H's relationship with the finance provider was unfair and I don't consider it to be likely that a court would conclude that there was an unfair relationship between Mr H and the finance provider in these circumstances;
- I sympathise with Mr H for the issues that he and his wife have had with their membership credits, the financial difficulties that they're experiencing and the health problems that his wife is suffering, but I consider that the finance provider's response to his claims was fair and reasonable; and
- I find that it wouldn't be fair or reasonable in these circumstances for me to require Oplo to refund to Mr H any of the money that he's paid for the credits, to cancel his loan agreement, 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 H's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 21 August 2023.

Jarrold Hastings
Ombudsman