DRN-3790474

## The complaint

Mr A complains that American Express Services Europe Limited ("AESEL") unfairly dealt with his claim under section 75 of the Consumer Credit Act 1974 ("CCA") in respect of a timeshare product he purchased using a credit card with them.

## What happened

In or around October 2019, Mr A attended a meeting with a timeshare supplier - I'll refer to the supplier as "A". During that meeting, Mr A agreed to purchase a timeshare product from A at a cost of £13,950. He says he paid a deposit of £4,185 using a credit card in his sole name - issued by AESEL. In addition to the purchase contract, Mr A entered into a finance agreement with another business specifically to pay the balance due for the purchase of the timeshare product.

In or around April 2020, Mr M became aware that A had entered into a liquidation process. As a result, he initiated a chargeback claim with AESEL for the deposit he'd paid using his credit card. AESEL agreed Mr A's claim and refunded £4,185 to his account.

In June 2020, Mr A sent a letter to A notifying them of his intention to terminate his timeshare contract with them. He said that as a consequence of the liquidation process, the contract had been breached and they were no longer able to arrange holidays.

Shortly after, Mr A received an response from the liquidators of A. They said Mr A *"still retained the same status of ownership as you held prior to the Company going into liquidation, and your rights in this respect are not prejudiced".* They further said they were in discussions to appoint a new club manager which would enable Mr A to use his entitlement under the timeshare contract and any request to terminate the agreement would need to be discussed with that manager.

In June 2020, Mr A told AESEL he wanted to initiate a claim under section 75 of the CCA ("S75"). He completed a claim form dated 3 July 2020 and submitted this to AESEL. In his claim, he said:

- there was a breach of contract as A wasn't able to provide the goods and services as they are in liquidation;
- the credit agreement (with the finance provider) and the timeshare contracts were frustrated due to the liquidation of A; and
- A had misrepresented the timeshare product as having a resale value which has provided not to be the case.

Mr A sought a *"full refund of monies expended and a cancellation/settlement of the current finance agreement",* together with interest at 8%. This included five payments of £126.89 he'd paid under the repayment direct debit instruction associated with the loan provided by the finance agreement.

Shortly after, Mr A received a letter confirming the appointment of a new club manager for the timeshare product he'd purchased.

In or around October 2020, Mr A complained to AESEL as he hadn't received a response following submission of his S75 claim. AESEL apologised for the delay caused by high claim

volumes as a result of the global pandemic. They explained *"there are no regulated timeframes for* [S75] *claims".*

In or around January 2022, AESEL wrote to Mr A. They said, *"we consider that you have evidenced a breach of contract* […] *following the liquidation of* [A…]*".* In settlement, AESEL offered to pay £634.45 equating to the five monthly repayments Mr A had made under the finance agreement for the timeshare product. Mr A wasn't willing to accept AESEL's offer. He was unhappy the timeshare and finance agreements remained active and told AESEL he was seeking legal advice.

Mr A decided to refer his complaint to this service. Having considered all the relevant information available, one of our investigator's didn't think AESEL needed to do anything more. They thought the offer made was fair.

Mr A didn't agree with our investigator's findings and asked that his complaint be referred to an ombudsman. To support his complaint, Mr A provided a document entitled *"Summary grounds of complaint against Amex* […]. This document included detailed allegations of:

- Breach of contract;
- Misrepresentation of the timeshare product by A; and
- Unfairness of the debtor-creditor relationship under section 140A of the CCA ("S140A").

As an informal resolution couldn't be reached, Mr A's complaint has been passed to me to consider further.

**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.

When considering what's fair and reasonable, DISP 3.6.4R of the Financial Conduct Authority ("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 A paid a deposit for the timeshare product with a credit card issued by AESEL, so it isn't in dispute that S75 applies here. This means that Mr A is 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 in the circumstances of this case.

However, while I acknowledge the detailed and extensive information provided by Mr A, together with the associated allegations and arguments, it appears AESEL have already accepted Mr A's claim that there was a breach of contract here. So, I don't think I need to make a finding on the claims under S75 and S140A.

It's important to stress that this service's role as an Alternative Dispute Resolution Service (ADR) is to provide mediation in the event of a dispute. The complaint being considered here specifically relates to whether I believe AESEL's treatment of Mr A's claim was fair and reasonable given all the evidence and information available. While the decision of an ombudsman can be legally binding, if accepted by the consumer, we do not provide a legal service.

In accepting Mr A's claim, AESEL's liability under S75 is normally limited to reimbursing Mr A for any outlay or directly associated costs (where causation can be established) in relation to the purchase that was funded by them. Here, that's the purchase of the timeshare product. Mr A's total outlay appears to consist of:

- The deposit payment of £4,185;
- Five monthly repayments of £126.89 (total £634.45).

It appears Mr A cancelled the finance repayment direct debit after the fifth payment, so no further repayments have been made. And I've not been provided with any evidence suggesting Mr A made any other payment specifically relating to the purchase of the timeshare contract.

I don't believe it's within the reach of S75 to require AESEL to cancel the timeshare contract. That wouldn't be within their control. Ultimately, whilst S75 does allow for a like claim to be made against AESEL, this is a financial claim for the costs directly attributed to the product or service being purchased – here that's the timeshare contract.

Further, while I acknowledge Mr A's arguments that A and the finance provider were associated parties under the transaction, there is nothing within the purchase contract that required Mr A to take up the finance agreement that he chose to. So, I believe the finance agreement is a separate contract to which AESEL have no connection under the CCA. And because of that, I can't reasonably ask AESEL to take steps to cancel that agreement or reimburse Mr A for anything owed under it.

Ultimately, it's for Mr A to decide whether or not to accept AESEL's offer. But I can't say that their treatment of his claim was unfair or unreasonable. And in the circumstances, I won't be asking AESEL to do anything more here.

**My final decision**

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 7 September 2023.

Dave Morgan
**Ombudsman**