

## **The complaint**

Ms B complains that Allium Money Limited won't refund to her the money that she paid for a trial membership of a holiday club. Her partner is also involved in her complaint and she's being represented by a claims management company.

## **What happened**

Ms B and her partner entered into a trial membership agreement to buy a trial membership of a holiday club in September 2019. The purchase price of the trial membership was £4,395 and Ms B also entered into a fixed sum loan agreement with a finance provider for a loan of that amount. She agreed to make 35 monthly repayments of £144.51 and a final payment of £144.19 to the finance provider.

Ms B contacted the finance provider in March 2020 to cancel her loan because she and her partner wouldn't be able to use the trial membership as a result of the restrictions imposed in response to the global pandemic. It said that Ms B was outside of the period in which the agreement could be cancelled and it confirmed that the holiday company would be extending the term of the trial membership period for six months because of those restrictions.

Ms B's representative then made claims, on behalf of Ms B, to the finance provider under sections 75 and 140A of the Consumer Credit Act 1974 in July 2020. It said that: the product was mis-sold and misrepresented to Ms B and her partner; the contract was breached; commission was paid between the finance provider and the holiday company which wasn't disclosed to Ms B which created a breach of fiduciary duty and caused an unfair relationship; and the loan was unaffordable.

The finance provider didn't uphold those claims. It said that Ms B had already made a complaint to it and, when she was told that she would be liable to continue with payments until the account was settled in full, she said that she was returning overseas and wouldn't be making the payments. It said that all customers attend a compliance interview with a compliance manager where every aspect of the purchase is explained to them prior to signing all of the documentation, the holiday company's resorts in the UK were open and available to reserve as were most of its resorts abroad, and the holiday company would continue to ensure that none of its members lost any of their trial membership entitlements because of the restrictions. It also said that there was no commission arrangement between it and the holiday company and it set out the holiday company's response to Ms B's claims.

Ms B wasn't satisfied with its response so a complaint was made to this service. Ms B's complaint form says that the holiday company and the finance provider failed to conduct a proper assessment of her ability to afford the loan; the finance provider paid a commission to the holiday company which wasn't declared to her and the holiday company unduly pressured her and her partner into entering into the trial membership agreement and her into entering into the loan agreement; all rendering the loan agreement unfair pursuant to section 140A.

Our investigator didn't recommend that Ms B's complaint should be upheld as she didn't think that the finance provider's decision to turn down her claims was unfair or unreasonable.

She wasn't persuaded that there was a misrepresentation at the time of sale and she didn't think that the holiday company had breached the contract. She said that she hadn't seen enough to suggest that the relationship between Ms B and the finance provider was unfair and she wasn't persuaded that a court would reach the conclusion that the relationship was unfair. She also said that she hadn't seen anything persuasive to suggest that the lending was unaffordable for Ms B.

Ms B's representative, on behalf of Ms B, says that it doesn't agree with our investigator's recommendation and would like the complaint to be referred to an ombudsman. It has raised concerns about the way that the finance was sold to Ms B and says that the holiday company didn't broker proper credit and failed to meet the standard of a regulated firm. It has referred to a decision issued by this service on a complaint about a different type of holiday ownership product in which it says the voluminous documentation for the product was reviewed and the debtor-creditor relationship was considered to be unfair. It says that the same voluminous documents and the same unfair charges exist in the product that was sold to Ms B and her partner so Ms B's relationship with the finance provider is unfair.

Ms B's loan has now been transferred to Allium Money.

### **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 Ms B's complaint shouldn't be upheld for these reasons:

- Ms B and her partner entered into a trial membership agreement in September 2019 to buy a trial membership of a holiday club which gave them the right to reserve up to five holiday weeks within the following three years;
- the agreement included the conditions and Ms B and her partner signed other documents including a member's declaration, a standard information form, a separate standard form of the withdrawal notice that could be given, an exchange contract and loan applications, and Ms B received pre-contract credit information and a loan explanation document and signed the loan agreement;
- the finance provider says that Ms B sent it an e-mail in March 2020 because she wanted to cancel her loan and that it had a phone conversation with her – it wrote to her in March 2020 and said that she was outside of the period in which the loan agreement could be cancelled and it confirmed that the holiday company would be extending the term of the trial membership period for six months because of the restrictions imposed in response to the global pandemic;
- the loan agreement made clear that Ms B had the right to withdraw from it without giving any reason within 14 days but I've seen no evidence to show that Ms B tried to withdraw from the loan agreement within the withdrawal period;
- Ms B and her partner had signed the separate standard form of the withdrawal notice that could be given which made it clear that they could withdraw from the trial membership agreement within 14 days without giving any reason – but I've seen no evidence to show that they tried to withdraw from that agreement within the withdrawal period;
- the finance provider confirmed that the holiday company would be extending the term of the trial membership agreement for six months because of the restrictions imposed in response to the global pandemic and, in response to Ms B's representative's July 2020 letter, it said that the holiday company's resorts in the UK were open and

available to reserve as were most of its resorts abroad, and the holiday company would continue to ensure that none of its members lost any of their trial membership entitlements because of the restrictions;

- I don't consider that Ms B had the right to cancel the loan agreement when she contacted the finance provider in March 2020 and I consider that the six month extension of the trial membership period and the holiday company's assurance that its members wouldn't lose any of their entitlements was a fair and reasonable response to the restrictions imposed in response to the pandemic;
- Ms B's representative made claims to the finance provider in July 2020 and Ms B then made a complaint to this service – the claim letter refers to claims under sections 75 and 140A, including that the trial membership was misrepresented to Ms B and her partner, but her complaint form only refers to claims under section 140A and doesn't refer to a misrepresentation made by the holiday company;
- the July 2020 letter also says that Ms B and her partner had provided a comprehensive witness statement which it said was enclosed with that letter – but Ms B's representative didn't include a witness statement with the copy of its letter that was sent to this service and I've not seen a witness statement by Ms B and her partner;
- 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 Ms B'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 her claims was fair and reasonable in the circumstances;
- Ms B's representative's July 2020 letter says that the credits were misrepresented to Ms B and her partner because they were advised that: the package would enable them to use exclusive accommodation and to have cheaper holidays (and over the length of the contract they would save an amount in excess of the sum paid); and the product was of some substance and that the purchase would be an investment (as the product would increase in value and, after a period of a few years, they would be able to sell it at a considerable profit) – but it says that the product is worthless and has no merit;
- the trial membership gave Ms B and her partner the right to reserve up to five holiday weeks within the following three years at the holiday club so I don't consider that the trial membership is worthless and I don't consider that it could properly be considered to be an investment;
- neither Ms B nor her representative has provided a detailed account of the circumstances in which Ms B and her partner were told that the trial membership would enable them to use exclusive accommodation and to have cheaper holidays, the conversations that took place at that time or the information that was provided to Ms B and her partner;
- there was no reference in the letter that the finance provider sent to Ms B in March 2020 to a complaint from Ms B about the trial membership having been misrepresented to Ms B and her partner and the finance provider says that all customers attend a compliance interview with a compliance manager where every aspect of the purchase is explained to them prior to signing all of the documentation;

- I'm not persuaded that there's enough evidence to show that the holiday company misrepresented the trial membership to Ms B and her partner or that they were induced into entering into the trial membership agreement by any such misrepresentations;
- the July 2020 letter also says that the holiday company has ceased to trade and has committed a repudiatory breach of contract but I understand that a new management company had been appointed and was able to provide the services under the trial membership agreement to Ms B and her partner;
- I consider that the liquidation of the holiday company could be a breach of contract for which Allium Money might now be liable under section 75 - but I also consider the appointment of the new management company to have been a suitable remedy for any breach of contract, and I've seen no evidence to show that Ms B and her partner's use of their trial membership has been adversely impacted by the liquidation of the holiday company;
- I'm not persuaded that there's enough evidence to show that there's been any other breach of contract by the holiday company for which Allium Money would now be liable under section 75;
- the July 2020 letter says that commission was paid between the finance provider and the holiday company which wasn't disclosed to Ms B which created a breach of fiduciary duty and caused an unfair relationship and Ms B's complaint form says that the finance provider paid a commission to the holiday company which wasn't declared to her;
- the finance provider says that there was no commission arrangement between it and the holiday company and I've not been provided with any evidence to show that any commission was paid by the finance provider to the holiday company;
- the July 2020 letter also says that the loan was unaffordable for Ms B and her complaint form says that the holiday company and the finance provider failed to conduct a proper assessment of her ability to afford the loan;
- Ms B and her partner had completed loan applications in September 2019 and Ms B had stated that she had a gross annual income of £22,000 and a gross household income of £58,000;
- the finance provider says that Ms B's application was underwritten subject to its lending criteria at the time which would have included validation of information on the application form and a check against a number of databases, including credit reference agencies, before the decision was made to approve the lending;
- Ms B had confirmed on the loan application that she was satisfied that the monthly repayment fitted her budget and was affordable over the life of the loan and the loan explanation document says: *"It is important that you only enter into this agreement if you can comfortably afford the payments, and are not aware of any potential changes in your circumstances that could affect your ability to make the payments in the future"*;
- Ms B phoned the finance provider in March 2020 and it has provided a recording of that call – she said that she wanted to cancel the loan but there was no reference to the loan not being affordable for her and I don't consider that she's provided enough evidence about her financial situation in September 2019 to show that a three year loan with monthly repayments of £144.51 wasn't affordable for her at that time;
- I'm not persuaded that there's enough evidence to show that the finance provider should have done more to assess the affordability of the loan for her, that the loan was mis-sold to her or that the finance provider has acted incorrectly in connection

with the loan;

- I understand that Ms B stopped making the monthly loan repayments to the finance provider and she said that she was returning overseas - so her loan account is in arrears and it has now been transferred to Allium Money;
- Ms B's complaint form says that the holiday company unduly pressured her and her partner into entering into the trial membership agreement and her into entering into the loan agreement but if they had been unduly pressured into entering into the trial membership agreement and didn't want to buy the trial membership, I consider that it would be reasonable to expect them to have contacted either the holiday company or the finance provider within the applicable withdrawal period to withdraw from the agreement;
- I've seen no evidence to show that Ms B said that she was unduly pressured into entering into the agreements when she contacted the finance provider in March 2020 and I'm not persuaded that there's enough evidence to show that Ms B and her partner were unduly pressurised into entering into the trial membership agreement or that Ms B was unduly pressurised into entering into the loan agreement or that the holiday company used unacceptable sales practices against them;
- Ms B's representative has referred to a decision issued by this service on a complaint relating to a different type of holiday ownership product in which it says the voluminous documentation for the product was reviewed and the debtor-creditor relationship was considered to be unfair – it says that the same voluminous documents and the same unfair charges exist in the product that was sold to Ms B and her partner so Ms B's relationship with the finance provider is unfair;
- that decision related to a holiday ownership product which was sold as an investment and related to a specified property – Ms B and her husband bought a trial membership of a holiday club which didn't relate to a specified property and which I don't consider was sold to them as an investment;
- both products were often sold in similar ways and may have had similar contractual documentation but the operation and effect of the contractual documentation would be significantly different;
- I'm not persuaded that there's enough evidence to show that Ms B'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 Ms B and the finance provider in these circumstances;
- I sympathise with Ms B for the issues that she and her partner have had with their trial membership but I consider that the finance provider's responses to the claims that had been made to it were fair and reasonable in the circumstances; and
- I find that it wouldn't be fair or reasonable for me to require Allium Money to refund to Ms B any of the money that she's paid under the loan agreement, to cancel the loan agreement, to pay her any compensation or to take any other action in response to her complaint.

### **My final decision**

My decision is that I don't uphold Ms B's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms B to accept or reject my decision before 28 November 2023.

Jarrold Hastings

**Ombudsman**