

## The complaint

Mr P complains that GE Money Consumer Lending Limited won't refund to him the money that he paid for some holiday club membership points. He's being represented in his complaint by a legal adviser.

## What happened

I issued a provisional decision on this complaint in May 2023 in which I described what had happened as follows:

*"Mr P and his partner had entered into an agreement for a trial membership of a holiday club and they entered into an acquisition agreement in May 2008 to buy some holiday club membership points. The total price of the membership points (including membership dues) was £18,487 and they traded in their trial membership which was given a value of £5,595 so the amount due from them was £12,892. Mr P entered into a fixed sum loan agreement with GE Money for a loan of that amount, to which £1,318.71 was added for a payment protection plan. Mr P agreed to make 120 monthly payments of £220.24 to GE Money.*

*Mr P and his partner entered into another acquisition agreement in September 2008 to buy some more holiday club membership points. The total price of those membership points was £11,499. The outstanding amount due from Mr P under the May 2008 loan was £13,639.12 and Mr P entered into another fixed sum loan agreement with GE Money for a loan of £25,138.12 to refinance the May 2008 loan and to pay the £11,499 to the holiday company. He agreed to make 120 monthly payments of £429.91 to GE Money. GE Money sold Mr P's loan account to a third party debt collection company in September 2009 because of issues with the payments from Mr P.*

*Mr P's representative made claims to GE Money in August 2017 under sections 75 and 140A of the Consumer Credit Act 1974. It said that Mr P had a claim for misrepresentation and that the misrepresentations and practices used in the sales presentation made the loan agreement unfair. GE Money didn't issue a substantive response to those claims so Mr P complained to this service. GE Money issued its final response to those claims in February 2022. It apologised for the delay in its response, which it said was due to an admin error, and it offered Mr P £50 by way of apology. It said that it was rejecting Mr P's complaint without considering its merits because the events complained about had occurred more than six years ago and it also said that his section 140A was statute barred.*

*Our investigator didn't recommend that Mr P's complaint should be upheld. He said that the September 2008 loan was transferred to the third party in September 2009 and he thought that any claims in relation to that loan would first need to be made to the third party as it was the current owner of the loan. He said that GE Money would be responsible for Mr P's claims about the May 2008 but that it looked to have ended in September 2008. He didn't think that GE Money acted unfairly by declining his misrepresentation claim and he thought that it was entitled to rely on the timing of his*

*section 140A claim to turn it down.*

*Mr P's representative, on his behalf, has asked for this complaint to be considered by an ombudsman. It has provided information about Mr P's financial difficulties and says that the third party hasn't responded to its correspondence so it wishes for GE Money to remain as the respondent. It has also provided a generic submission from counsel about the holiday company and the unfair terms that it used".*

I said in my provisional decision: "I agree with our investigator that Mr P's complaint shouldn't be upheld but for these reasons:

- *Mr P didn't use credit provided by GE Money to pay for the trial membership so GE Money would have no liability to him under section 75 or 140A relating to that agreement;*
- *Mr P used a loan from GE Money to pay for the membership points that he and his partner bought in May 2008 – but that loan was refinanced in September 2008 when he and his partner bought some more membership points so I consider that the May 2008 loan agreement ended in September 2008;*
- *GE Money sold the account for Mr P's September 2008 loan to the third party in September 2009 but it says that it remains responsible for any claims or complaints raised about the loan, so in this decision I'm considering Mr P's complaint about GE Money's response to his section 75 and 140A claims about both the May and September 2008 purchases;*
- *we don't have a free hand to consider every complaint that's referred to us and our rules, which we're required by law to follow, say – amongst other things – that we can't normally deal with a complaint if it's referred to us more than six years after the event complained of; or (if later) more than three years from the date on which the complainant became aware (or ought reasonably to have become aware) that they had cause for complaint;*
- *Mr P's complaint is that GE Money turned down the claims that he'd made to it and I accept that he referred his complaint to this service within six years of that happening - but I need to consider whether the Limitation Act 1980 applies to his claims;*
- *Mr P's claims were made under sections 75 and 140A but I'm not determining the outcome of those claims in this decision as only a court would be able to do that - I'm considering whether or not GE Money's response to those claims was fair and reasonable in the circumstances;*
- *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);*
- *Mr P's claim under section 75 is that the membership points were misrepresented to him and his partner and that they wouldn't have bought them if they hadn't been misrepresented to them - if the criteria for a claim under section 75 were met, GE Money would be expected to consider that claim unless the claim was brought outside of the time limits set out in the Limitation Act in which case it would be entitled to rely on the Limitation Act and to not consider the claim;*
- *the time limit for a misrepresentation claim (whether under section 2 or 9 of the Limitation Act) is six years from the date on which the cause of action accrued (which is when everything needed to make a claim had occurred);*
- *I consider that Mr P could have made a claim to the holiday company or GE Money*

*about the misrepresentations that he says induced him and his partner into buying the membership points in September 2008 as that was the latest time that any misrepresentations would have been made to them and any loss would have been incurred as that was when he also entered into the second loan agreement with GE Money;*

- I consider that his cause of action accrued at that time, so he would have had six years from then to bring a misrepresentation claim against either the holiday company or GE Money – but a claim wasn't made under section 75 until August 2017, nearly nine years later which was outside of the time limits set out in the Limitation Act so I consider that GE Money has a defence to his section 75 claim and I find that it wouldn't have been unreasonable for it to have rejected that claim;*
- Mr P's representative says that the misrepresentations and practices used in the sales presentation made the loan agreements unfair - 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;*
- the courts have said, when considering section 140A, that the time for limitation purposes runs from the date that the credit agreement ended (if it was not still running at the time the claim was made) and the limitation period for a claim under section 140A is six years;*
- GE Money says that the May 2008 loan ended in September 2008 as it was refinanced when Mr P entered into another loan but the evidence shows that the third party was communicating with Mr P about the outstanding balance of the September 2008 loan last year so I don't consider that a court would conclude that his claim under section 140A was made too late and I consider that it would have been fair and reasonable for GE Money to have responded to that claim;*
- Mr P's representative described in its August 2017 letter the misrepresentations that it said had been made by the holiday company, including that:*
  - Mr P and his partner easily could divest themselves of the points membership by selling it, or renting out the rights purchased under it;*
  - they could always recoup the cost of purchasing their points membership by selling it; and*
  - they would be able to holiday at any resort they wished any time they wanted, with accommodation of the same standard as they had previously enjoyed;*
- I've not been provided with all of the documents that Mr P and his partner would have signed in May and September 2008 but the documents that have been provided include the acquisition agreement, the terms and conditions and a member's declaration for both the May and September 2008 purchases;*
- the member's declaration that Mr P and his partner signed in May 2008 says: "We understand that [the holiday company] does not and will not run any resale, rental or Re-purchase programmes"; and: "We understand that the purchase of our membership in vacation club is for the primary purpose of holidays and is not an investment in real estate and [the holiday company] makes no representation as to the future price or value of the Vacation Club Holiday product";*
- I'm not persuaded that there's enough evidence to show that Mr P and his partner were told that they easily could divest themselves of the points membership by selling it or renting out the rights purchased under it or that they could recoup the cost of purchasing their membership points by selling them – and if that had been said to them I consider that it would be reasonable to expect them not to have signed*

*the member's declaration and to have asked the holiday company for more information about those issues;*

- the acquisition agreement that Mr P and his partner signed in May 2008 under which they purchased 1,500 point rights says: "This is the number of points that will be credited to us on 1st January each Use Year ..."; and the member's declaration also says: "We understand that [the holiday company Travel] aims to provide personal service to our members and its prices will be comparable to but not necessarily cheaper than other providers of the same services";*
- Mr P and his partner used their membership points for seven holidays between September 2008 and September 2012 but I've seen no evidence to show that they complained to the holiday company about those issues until August 2017 and, if there had been issues with the availability and quality of the accommodation, I consider that it would be reasonable to expect them to have contacted the holiday company about those issues sooner than they did;*
- I'm not persuaded that there's enough evidence to show that Mr P and his partner were told that they would be able to holiday at any resort they wished any time they wanted, with accommodation of the same standard as they had previously enjoyed;*
- I'm not persuaded that there's enough evidence to show that the membership was misrepresented to Mr P and his partner or that they were induced into entering into the acquisition agreements by misrepresentations made by the holiday company;*
- Mr P's representative says that the practices used in the sales presentation made the loan agreement unfair;*
- I'm not persuaded that there's enough evidence to show that Mr P and his partner were unduly pressurised into buying the membership points in May and September 2008, that Mr P was unduly pressurised into entering into the loan agreements or that the holiday company used unacceptable commercial practices against them – I've seen no evidence to show that Mr P complained to GE Money about those issues until August 2017 (more than nine years after the first loan had been made to him) and I consider that it would be reasonable to expect him to have complained to GE Money about any such issues before then;*
- Mr P and his partner had bought a trial membership which they traded in towards the cost of some membership points in May 2008 and they then bought more membership points in September 2008 – if they were concerned about the sales practices that had been used by the holiday company when selling them the trial membership or the membership points in May 2008, I consider that it would be reasonable to expect them not to have then bought more membership points from the holiday company in September 2008;*
- Mr P's representative has provided a generic submission from counsel about the holiday company and the unfair terms that it used but it would be for a court to determine whether or not any of the terms in the agreements that were signed by Mr P and his partner were unfair;*
- 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 P and his partner and I consider it be unlikely that a court would conclude in these circumstances that the*

*terms of the documents created an unfair relationship between Mr P and GE Money;*

- I'm not persuaded that there's enough evidence to show that Mr P's relationship with GE Money was unfair and I don't consider it to be likely that a court would conclude that there was an unfair relationship between Mr P and GE Money in these circumstances;*
- Mr P's representative has provided evidence of Mr P's financial difficulties and Mr P says that when he bought the trial membership he and his partner both had their own businesses, bringing in good income, and they were in good health but, after falling into arrears, his partner's health took a turn for the worse through stress, they split up for two years, she left her business and sold her house so they went into rented accommodation;*
- I sympathise with Mr P and his partner for their financial difficulties and the other issues that they've experienced but it appears from the account statements that Mr P has received from the third party that it's accepting reduced monthly repayments of £200 from him;*
- the third party is required to respond to Mr P's financial difficulties positively and sympathetically so, if he hasn't already done so I suggest that he explains his financial difficulties to the third party – but I don't consider that GE Money is now required to take any action in response to his financial difficulties;*
- there was a significant delay in GE Money issuing a substantive response to Mr P's claims and I don't consider that its response fully and properly responded to the claims that had been made so I can't say that its response was fair and reasonable – but if it had fully and properly responded to his claims I consider that it would have been appropriate for it not to have upheld Mr P's claims;*
- GE Money offered to pay £50 to Mr P because of its delay in responding to his claims and his representative described that offer as insulting – but if Mr P now wants to accept that offer I suggest that he contacts GE Money to see if it remains available to him; and*
- I sympathise with Mr P for the issues that he's had with his holiday club membership, but I find that it wouldn't be fair or reasonable in these circumstances for me to require GE Money to refund to him any of the money that he's paid under the loan agreements, to end the September 2008 loan agreement, to write-off the outstanding amount due from him, to pay him any further compensation or to take any other action in response to his complaint”.*

Subject to any further comments or evidence that I received from any of Mr P, his representative and GE Money, my provisional decision was that I didn't intend to uphold this complaint. Both Mr P's representative and GE Money have acknowledged receipt of my provisional decision but neither of them has provided any further comments or evidence in response to it.

### **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.

As none of Mr P, his representative and GE Money has provided any further comments or evidence in response to my provisional decision, I see no reason to change the findings that I set out in my provisional decision.

**My final decision**

For the reasons set out in my provisional decision, and as set out above, my decision is that I don't uphold Mr P's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 17 August 2023.

Jarrold Hastings  
**Ombudsman**