

## **The complaint**

Mr A has made various complaints about how Oplo PL Ltd (“Oplo”) handled his loan and his subsequent complaint concerning finance it provided for a timeshare product.

## **What happened**

In June 2019 Mr A purchased a timeshare product from a company I will call C. It cost £8,500 and this was funded by finance provided by a lender I will call H. The loan was settled and subsequently the loan portfolio was sold to Oplo.

Mr A has made a number of complaints, but for the purposes of this decision I am asked to consider if there was an unfair relationship under s.140A Consumer Credit Act 1974 (“CCA”). Mr A’s initial complaint to this service was made out of time and so I cannot consider the issues he raised with Oplo as part of that complaint. These issues have been dealt with separately.

He has also referenced s.75 CCA and whether the correct checks were made by the lender to ensure the loan was affordable. On the matter of s.75 I have not seen that he made a claim to Oplo under that legislation and so I cannot address any complaint since the bank has not had the chance to say whether or not it would accept such a claim and why. The bank more recently issued a final response letter to Mr A on the matter of affordability, but he has not responded to that so it is not an issue I can consider in this decision.

Mr A has raised a number of concerns about the sale which he says gave rise to an unfair relationship. It seems his original concerns were triggered by C going into liquidation. He has said the broker failed to disclose any commission it might have received, the sale was pressurised and it was sold as an investment.

The complaint was considered by one of our investigators who having dealt with the matter of jurisdiction didn’t recommend that it be upheld. He did not consider there was evidence to support Mr A’s claim that there had been an unfair relationship. Nor did he believe there had been misrepresentation by C and he noted the agreement referred to commission being paid so this had not been hidden. He also touched on the issue of the broker and noted the relevant permissions were in place.

Mr A didn’t agree and asked for his complaint to be considered by an ombudsman

## **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.

t When doing that, I’m required by DISP 3.6.4R of the FCA’s Handbook to take into account the:

“(1) relevant:

(a) law and regulations;

(b) regulators' rules, guidance and standards;

(c) codes of practice; and

(2) ([when] appropriate) what [I consider] to have been good industry practice at the relevant time."

And when evidence is incomplete, inconclusive, incongruent or contradictory, I've made my decision on the balance of probabilities – which, in other words, means I've based it on what I think is more likely than not to have happened given the available evidence and the wider circumstances.

Having read and considered all the available evidence and arguments, I don't think this complaint should be upheld. I will explain why.

### Misrepresentation

Mr A alleges that the holiday product was misrepresented to him. Not having been present at the sale it's not possible for me to say exactly what was said, but as our investigator has pointed out a positive sales pitch by C's representative is not enough to allow me to conclude there was misrepresentation. Furthermore his claim that he was not told about commission is undermined by the agreement containing a reference of commission. In short, Mr A is asking Oplo to repay him a significant sum of money and it is reasonable for the business to be provided with clear evidence in support of that claim. I acknowledge Mr A's testimony, but in the circumstances I do not consider this is enough to demonstrate misrepresentation.

### Section 140A CCA

Only a court has the power to decide whether the relationships between Mr A and Oplo were unfair for the purpose of s. 140A. But, as it's relevant law, I do have to consider it if it applies to the credit agreement – which it does.

However, as a claim under Section 140A is "an action to recover any sum recoverable by virtue of any enactment" under Section 9 of the LA, I've considered that provision here.

It was held in *Patel v Patel* [2009] EWHC 3264 (QB) ('*Patel v Patel*') that the time for limitation purposes ran from the date the credit agreement ended if it wasn't in place at the time the claim was made. The limitation period is six years and the claim was made within this period.

However, I'm not persuaded that Mr A could be said to have a cause of action in negligence against Oplo anyway.

Mr A's alleged loss isn't related to damage to property or to him personally, which must mean it's purely financial. And that type of loss isn't usually recoverable in a claim of negligence unless there was some responsibility on the allegedly negligent party to protect a claimant against that type of harm.

Yet I've seen little or nothing to persuade me that Oplo assumed such responsibility – whether willingly or unwillingly.

Even if that were not the case I cannot see that there was an unfair relationship. There is no evidence of misrepresentation and a possible commission payment was not hidden. Furthermore, Mr A had a 14 day withdrawal period which he did not use. None of this points

towards an unfair relationship.

Finally although the matter of the broker's status has been considered previously I would add that I am in agreement with our investigator's conclusions.

I have every sympathy with Mr A, but I do not consider his complaint should be upheld.

**My final decision**

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 4 September 2023.

Ivor Graham  
**Ombudsman**