

## The complaint

Mrs M complains that Oplo PL Limited won't refund to her the money that she paid for a holiday product using a loan from a finance provider. Her husband is also involved in her complaint and she's being represented in her complaint by a claims management company.

## What happened

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

*"Mrs M and her husband agreed to buy 16,200 holiday credits in August 2018. The purchase price of the credits was £19,100 and Mrs M entered into a fixed sum loan agreement with a finance provider that she electronically signed in August 2018 for a loan of that amount. She agreed to make 180 monthly repayments of £194.97 to the finance provider.*

*Mrs M's representative made claims, on behalf of Mrs M, to the finance provider in May 2021 under sections 75 and 140A of the Consumer Credit Act 1974. It said that the credits were mis-sold to Mrs M and her husband and, but for the misrepresentations made to them, they wouldn't have purchased the credits nor entered into the loan agreement. It said that the holiday company was in liquidation so couldn't provide the service sold and was in breach of contract. It also said that the terms of the agreement are so egregious as to be unfair in themselves as the payment of commission has been hidden from view.*

*The finance provider said that Mrs M and her husband had purchased a flexible points-based membership which allows them access to any unit type in any season for any number of weeks per annum. It said that, prior to the conclusion of their purchase, all customers attend a video recorded compliance interview with a compliance manager where every aspect of their purchase is explained to them prior to signing all of the contractual documentation. It said that it was unable to agree that they weren't given a choice of other lenders. It said that they were fully aware of the product that they were purchasing and, during its relationship with the holiday company, no commission has ever been paid.*

*Mrs M wasn't satisfied with that response so a complaint was made to this service. Mrs M's complaint form says that:*

- the finance provider paid a commission to the holiday company which wasn't declared to Mrs M;*
- the holiday company failed to conduct a proper assessment of Mrs M's ability to afford the loan and unduly pressured her into entering a contract with the holiday company and the loan agreement with the finance provider;*
- the product was misrepresented to Mrs M and her husband; and*
- the holiday company used aggressive commercial practices to pressure Mrs M;*

*all rendering the agreement unfair pursuant to section 140A and it said that the claim should also be considered under section 75.*

*Our investigator recommended that Mrs M's complaint should be upheld. He thought that the holiday company had misrepresented the credits as an investment and as something that could be sold easily in the near future. He recommended that the finance provider should cancel the loan, refund all loan payments made (with interest), either procure Mrs M's release from her obligations to the holiday company or agree to take over her credits and/or indemnify her for any future maintenance costs, and remove any information about the loan from Mrs M's credit file.*

*The finance provider has asked for this complaint to be considered by an ombudsman. It has provided an explanation of how the credits work and a detailed response to our investigator's recommendation. It says, in summary and amongst other things, that:*

- the purchase is for credits which can be used for a variety of vacations and experiences and is a different and more flexible product than traditional timeshares;*
- the 30 year term allows the customer great flexibility when deciding how best to use their remaining credits and members have the option to exchange additional or future years credits and spend more credits on the holidays they desire and once the credits have been used, they cease to exist (so a member could use their full amount of points in a single year);*
- the current management company says that it hasn't received any contact or enquiry from Mrs M to initiate a sale of her credits; □ in the compliance video there's a discussion about using more than the minimum*
- credits in a year and the potential cost involved and there's nothing to indicate that the credits were anything other than a holiday and experiences product;*
- it's also stated in the video that sales are subject to the usual market forces and there's no evidence in the contractual documentation, nor during the video, to the holiday company arranging a buyback;*
- during the compliance meeting customers are invited to read the documents and to take as long as they need which provides the customer with the opportunity to question any possible dissonance in what they allege they have been told and, if Mrs M believed that she was sold an "investment" but the documents she was invited to sign didn't mention it, she should have raised that at the time (particularly as the documents say that only what's recorded is contractual);*
- it undertakes robust affordability assessments and checked Mrs M's income and made estimates of expenditure using Office of National Statistics figures and Mrs M confirmed in a compliance call in September 2018 that she wasn't aware of any future circumstances which would affect her ability to repay the loan; and*
- there's no evidence from the compliance video of pressure selling and it can't agree that the credits were mis-sold to Mrs M or that they were sold to her as an investment.*

*It also says that it has confirmed with the current management company for the credits, that Mrs M's membership is live and available for her to use. It says she used her credits in 2019 for a holiday and has confirmed that Mrs M hasn't been in touch with it concerning bookings since her 2019 holiday.*

*Mrs M's loan has been transferred to Oplo by the finance provider".*

I set out my provisional findings in that provisional decision which were as follows:

*"Mrs M's complaint form says that:*

- the finance provider paid a commission to the holiday company which wasn't declared to Mrs M;*
- the holiday company failed to conduct a proper assessment of Mrs M's ability to afford the loan and unduly pressured her into entering a contract with the holiday company and the loan agreement with the finance provider;*
- the product was misrepresented to Mrs M and her husband; and*
- the holiday company used aggressive commercial practices to pressure Mrs M;*

*all rendering the agreement unfair pursuant to section 140A and it said that the claim should also be considered under section 75.*

*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). 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 Mrs M'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.*

*Mrs M's representative's May 2021 letter to the finance provider described the misrepresentations that it says were made by the holiday company to Mrs M and her husband, including that they were advised that:*

- they would be able to use the credits at any time of the year and as many times as they wished, they would not be limited to usage and they were the best option for them to purchase as these were new and exciting and would allow them more freedom; and*
- they would be able to sell their credits whenever they wanted;*

*which wasn't true as they've had many issues with availability and they were only able to arrive on certain dates and were only able to go for a week at a time.*

*I've been provided with a summary of the membership application agreement that Mrs M and her husband would have signed with the holiday company in August 2018 but I've not been provided with a copy of that agreement or the other documents that they would have signed during the compliance meeting.*

*The finance provider has provided a summary of what happened during the compliance meeting and says that the current management company has confirmed that Mrs M hasn't been in touch with it concerning bookings since her 2019 holiday and that it hasn't received any contact or enquiry from Mrs M to initiate a sale of her credits. It also says that there was a discussion about using more than the minimum credits in a year and the potential cost involved and there's nothing to indicate that the credits were anything other than a holiday and experiences product.*

*I've carefully considered what Mrs M's representative has said about the credits being misrepresented to Mrs M. I don't consider it to be consistent with the way that the credits operate that Mrs M and her husband would have been told that there would be unlimited availability of the holidays and other experiences for which the credits could be used. I sympathise with Mrs M and her husband for any issues that they've had with availability but the management company says that Mrs M hasn't been in touch with it concerning bookings since her 2019 holiday.*

*Neither Mrs M nor her representative has provided evidence to support the claims that the holiday company misrepresented to Mrs M and her husband that they would be able to use the credits at any time of the year, as many times as they wished, they would not be limited to usage and that they were the best option for them to purchase. Nor am I persuaded that there's enough evidence to show that Mrs M and her husband were told that they would be able to sell their credits whenever they wanted, that the credits were sold to them as an investment, or that they've tried to sell their credits.*

*I'm not persuaded that there's enough evidence to show that the credits were misrepresented to Mrs M and her husband or that they were induced into entering into the membership application agreement by any such misrepresentations.*

*I understand 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 the finance provider says that a new management company has been appointed to provide the services in connection with the credits that Mrs M and her husband had bought from the holiday company. The new management company says that Mrs M's membership is live and available for her to use and I've seen no evidence to show that Mrs M and her husband's 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 Mrs M and her husband would be entitled to terminate their agreement in these circumstances.*

*Mrs M's representative has described the issues that it says caused Mrs M's relationship with the finance provider to be unfair. It says that the finance provider paid a commission to the holiday company which wasn't declared to Mrs M but the finance provider says that, during its relationship with the holiday company, no commission has ever been paid. I've not been provided with any evidence to show that a commission was paid by the finance provider to the holiday company in connection with Mrs M's loan agreement.*

*It also says that the holiday company failed to conduct a proper assessment of Mrs M's ability to afford the loan but the finance provider says that it undertakes robust affordability assessments and checked Mrs M's income and made estimates of expenditure using Office of National Statistics figures. I've not been provided with documentary evidence of that affordability assessment but the summary of the compliance call that was made to Mrs M in September 2018 shows that she confirmed that all finance details were correct, the monthly payment of £194.97 was affordable for her and there were no expected changes to her financial position.*

*Neither Mrs M nor her representative has provided evidence to show that a proper assessment of the affordability of the loan wasn't undertaken before the loan was made to Mrs M or that the loan wasn't affordable for her. I'm not persuaded that there's enough evidence to show that a monthly loan repayment of £194.97 wouldn't have been affordable for Mrs M at the time that the loan was made to her.*

*The loan was made to Mrs M in August 2018 and she received the compliance call in September 2018 but I've seen no evidence to show that she complained to the finance provider about the affordability checks that it had made or the affordability of the loan for her until her representative's letter in May 2021. If the loan wasn't affordable for her at the time that it was taken out, I consider that it would be reasonable to expect her to have contacted the finance provider about those issues sooner than she did.*

*Mrs M's representative says that the holiday company unduly pressured Mrs M and her husband into entering into a contract with the holiday company and unduly pressured Mrs M into entering into the loan agreement with the finance provider and that it used aggressive commercial practices to pressure her. The summary of the September 2018 compliance call shows that Mrs M confirmed that she hadn't been put under any pressure and says that she would rate the overall service from the holiday company as five out of five and that her overall recommendation of the holiday company was five out of five.*

*If Mrs M had been unduly pressured into entering into the agreements or unacceptably aggressive commercial practices had been used on her and her husband, I would expect her to have mentioned that in the compliance call and to have used the compliance call as an opportunity to complain about those issues to the finance provider. But she didn't complain to the finance provider about those issues until her representative's letter in May 2021 – nearly three years later.*

*Mrs M electronically signed the loan agreement and, in doing so, she confirmed that she'd received the pre-contract credit information. The finance provider says that an initial disclosure document was also provided to Mrs M. The initial disclosure document shows that the finance provider was the holiday company's preferred lender but it also identified two other lenders that might be able to provide finance to Mrs M. The loan agreement set out Mrs M's right to withdraw from the loan agreement within 14 days but I've seen no evidence to show that Mrs M contacted the finance provider, or the holiday company, within any applicable withdrawal period about withdrawing from either the loan agreement or the membership application agreement.*

*I'm not persuaded that there's enough evidence to show that Mrs M and her husband were unduly pressured into buying the credits or that Mrs M was unduly pressured into entering into the loan agreement in August 2018 or that the holiday company used unacceptable commercial practices against them.*

*I've carefully considered what Mrs M's representative has said about the unfairness of the terms of the agreement and other documents that Mrs M would have entered into with the holiday company but I've not been provided with most of the contractual documents that would have been signed by Mrs M at that time and it would be for a court to determine whether or not any of the terms in those agreements 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 Mrs M 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 Mrs M and the finance provider.*

*I'm not persuaded that Mrs M and her representative have provided enough evidence to show that Mrs M'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 Mrs M and the finance provider in these circumstances.*

*I consider that the finance provider's response to Mrs M's claims was fair and reasonable. Although I sympathise with Mrs M for the issues that she and her husband have had with their credits, I find that it wouldn't be fair or reasonable for me to require Oplo to refund to her any of the money that she paid for the credits, to cancel her loan, to pay her any compensation or to take any other action in response to her complaint".*

Subject to any further comments or evidence that I received from any of Mrs M, her representative and Oplo, my provisional decision was that I didn't intend to uphold this complaint. Oplo says that it has no further points to make but Mrs M's representative has responded to my provisional decision in detail. It says, in summary and amongst other things, that:

- the credits were sold to Mrs M and her husband as an investment that was extremely desirable and could easily be resold at a profit – which was consistent with representations made by the holiday company in previous purchases which had initially been represented as an investment but at sales meetings following those purchases they were advised that the product currently owned was not as desirable as had been represented and as a consequence would prove difficult to sell so they were induced to trade in those products;
- the representations made by the holiday company in relation to the previous purchases which led Mrs M and her husband to form the opinion that they were purchasing an investment applied equally to representations made by the holiday company immediately prior to the purchase of the credits in August 2018;
- Mrs M and her husband traded in their existing products (sold to them as investments) having been induced to do so on the basis that it would make it easier to sell what had previously been represented as an investment;
- it agrees with our investigator's reasoning in relation to the mis-selling of the credits as investments and the difficulty purchasers then faced if they elected to try and sell their credits;
- the holiday company engaged in misleading commercial practices which caused Mrs M and her husband to take a transactional decision that they wouldn't have otherwise done;
- the closure of the holiday company's re-sale scheme as a consequence of the liquidation of the holiday company is a clear example of breach of contract; and
- my provisional decision fails to take into consideration numerous other complaints made to this service in relation to this product and the accompanying supporting testimony of the complainants.

### **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'm not persuaded that I should change the findings that I set out in my provisional decision. I said in my provisional decision that there wasn't enough evidence to show that Mrs M and her husband were told that they would be able to sell their credits

whenever they wanted, that the credits were sold to them as an investment, or that they've tried to sell their credits. I don't consider that Mrs M's representative's response to my provisional decision has provided enough further evidence to show that the credits were misrepresented or mis-sold to Mrs M and her husband by the holiday company or that they were induced into entering into the membership application agreement by any such misrepresentations.

The membership application agreement shows that the purchase price of the credits that Mrs M and her husband bought in August 2018 was £19,100. Mrs M's representative says that they were also induced to trade-in the holiday products that they'd bought in 2014, 2015 and 2016. Oplo would have no liability under sections 75 and 140A arising from the sale of the holiday products to Mrs M and her husband in 2014, 2015 and 2016 because they weren't paid for using credit provided by Oplo. I'm not persuaded that there's enough evidence to show that the holiday company misrepresented the reasons to change to credits to Mrs M and her husband.

Mrs M's representative says that the holiday company's resale scheme has been closed as a consequence of the liquidation of the holiday company but there's no reference in the documents that Mrs M and her husband signed in August 2018 to the holiday company agreeing to offer a re-sale scheme. I don't consider that Mrs M has provided enough evidence to show the steps that she and her husband have taken to try to resell their credits and the management company says that Mrs M hasn't been in touch with it concerning bookings since her 2019 holiday. I'm not persuaded that there's enough evidence to show that the resale scheme was misrepresented to Mrs M and her husband or that there's been a breach of contract relating to the resale scheme.

I said in my provisional decision that I wasn't persuaded that there was enough evidence to show that Mrs M and her husband were unduly pressured into buying the credits in August 2018, that Mrs M was unduly pressured into entering into the loan agreement or that the holiday company used unacceptably aggressive sales practices against them. I'm also not persuaded that there's enough evidence to show that the holiday company engaged in misleading commercial practices or that it has breached the Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010 or the Consumer Protection from Unfair Trading Regulations 2008.

I'm not persuaded that there's enough evidence to show that Mrs M'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 Mrs M and the finance provider in these circumstances. I consider that the finance provider's response to Mrs M's claims was fair and reasonable.

I sympathise with Mrs M for the issues that she and her husband have had with their credits, but I find that it wouldn't be fair or reasonable in these circumstances for me to require Oplo to refund to Mrs M any of the money that she's paid under the loan agreement, to cancel the loan, 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 Mrs M's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 4 October 2023.

Jarrold Hastings  
**Ombudsman**