DRN-4323598

The complaint

Mrs P complains that a timeshare product was mis-sold to her. Because the purchase was financed with a loan from Honeycomb Finance Limited and responsibility for that loan has been transferred to Oplo PL Ltd, she says that it is responsible, along with the seller, for the mis-sale and other concerns she has raised.

For simplicity, I'll refer to the lender as "Honeycomb" in this decision. Mrs P has been represented by claims management businesses, so when I refer to her arguments and submissions, I include those made on her behalf.

What happened

Mr and Mrs P had been members of Club Infiniti, a timeshare and holiday club, since 2002. Over the years they have entered into around a dozen contracts for timeshare and similar products.

In September 2018 they entered into a contract for the purchase of 100,000 membership points. Of those points, 24,000 were traded and 76,000 were described as "pure" points. Mr and Mrs P could trade the points on an annual basis for holiday accommodation at various resorts linked to or operated by Club Infiniti. The points would expire at the end of 2057.

The total cost of buying 100,000 membership points was £19,433.90. This was financed with a 15-year loan for that amount, provided to Mrs P by Honeycomb.

In or around October 2021 Mrs P contacted Honeycomb to say that she thought the timeshare and the loan had been mis-sold. In summary, she raised the following issues:

- pressure selling;
- lack of availability of accommodation;
- affordability of the loan;
- breaches of EU law;
- misrepresentation;
- breach of contract; and
- unfairness of the relationship with Honeycomb.

Honeycomb did not accept that there had been any mis-sale or that it had any liability to Mrs P. It noted in particular:

- Mr and Mrs P had been members of Club Infiniti since 2002, so would have been familiar with its operation – including booking arrangements and the fee structure.
- They had in fact booked several holidays in the previous two years.
- They had signed various declarations indicating their satisfaction with the sales process and the loan application.

- Honeycomb had considered information about Mr and Mrs P's income before agreeing the loan.

Mrs P did not accept Honeycomb's response and referred the matter to this service. Our investigator did not however recommend that the complaint be upheld. Mrs P asked that an ombudsman review the case.

I did that and issued a provisional decision. In that provisional decision, I said:

Sections 56 and 75 of the Consumer Credit Act 1974

Under section 56 of the Consumer Credit Act, statements made by a supplier in relation to a transaction financed or proposed to be financed under pre-existing arrangements between a credit provider and the supplier are deemed to be made as agent for the creditor.

In addition, one effect of section 75(1) of the Consumer Credit Act is that a customer who has a claim for breach of contract or misrepresentation against a supplier can, subject to certain conditions, bring that claim against a credit provider. Those conditions include:

- *that the credit financed the contract giving rise to the claim, either in whole or in part; and*
- *that the credit was provided under pre-existing arrangements or in contemplation of future arrangements between the credit provider and the supplier.*

The supplier here was Leisure Dimensions Limited, the company which sold the points and associated club membership. That company was also named as the credit intermediary. I'm satisfied therefore that the arrangements between it and Honeycomb are such that sections 56 and 75 could apply. I have therefore considered what Mrs P has said about representations made at the point of sale and about breaches of contract.

Misrepresentation

A misrepresentation is, in very broad terms, a statement of law or of fact, made by one party to a contract to the other, which is untrue and which induces the other party into the contract.

Mrs P's allegations are largely vague and unsupported by any evidence, either of what was said or that it was untrue. One of her main submissions is that accommodation was unavailable. In its response to her claim, however, Honeycomb listed eight holidays she and Mr P had taken between March 2018 and March 2020. Five of those had been taken since they signed the contract in 2018. Mrs P has not suggested that list is inaccurate or wrong, and neither has she provided any information about failed attempts to make bookings. So, where there is evidence relevant to Mrs P's allegations, it actually contradicts what she has said.

In addition, Mr and Mrs P signed a declaration which included a statement that they had not "received any promises that are not in writing". I do not believe they would have done that if their decision to buy the points had been based on something they had been told orally.

Breach of contract

Mrs P has not, in my view, identified any breach of contract. It appears that she has been provided with the service she paid for.

Mrs P has suggested there are issues with the fairness of the management fees, but has not provided anything to indicate that they have been applied other than in accordance with the

contract. In any event, I agree with Honeycomb that, having been members since 2002, Mr and Mrs P are likely to be familiar with how fees are applied and to be comfortable with those arrangements. They have not suggested for example that there was a change in the way the club operated after September 2018.

Section 140A claims

Under section 140A and section 140B of the Consumer Credit Act a court has the power to consider whether a credit agreement creates an unfair relationship and, if it does, to make appropriate orders in respect of it. Those orders can include imposing different terms on the parties and refunding payments.

In considering whether a credit agreement creates an unfair relationship, a court can have regard to any linked transaction.

I am satisfied that the timeshare agreement in this case was a "linked transaction" within the meaning of section 19 of the Consumer Credit Act.

I have therefore considered whether the sale and subsequent events are likely to mean that the loan agreement created an unfair relationship. I think it most unlikely that they did.

Mrs P has said that there were breaches of EU law in the sales process. The relevant EU Directive was incorporated into English law under The Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010 ["the Timeshare Regulations"]*. It is not apparent however that there was any breach of those regulations here. Even if there were, that would not automatically give rise to a claim that Mrs P could bring against the seller.*

Mrs P says that she and her husband were put under pressure to complete the sale. But they signed a declaration which included:

"I/We agree that the presentation of the Club Infiniti product and services has been conducted in a friendly and helpful manner; and that it has been fully explained to me how the Infiniti Holiday Points Program can be used and how this Program will benefit me/us in the future."

And:

"I/we confirm that I/We have been given every opportunity to consider the purchase that I/we are making and we have not been put under pressure or coerced to purchase the products and services; and I/we also confirm that I/we have carefully considered other financial commitments and know that I/we are able to meet the financial obligations entered into hereby."

Again, I doubt they would have signed those declarations if they had in fact been put under pressure. At the very least, they would have sought to cancel the agreement in the 14 days available to them to do so.

As I have indicated, Mr and Mrs P had bought several Club Infiniti products over the years, and would no doubt have been familiar with the sales process.

Only a court can make orders under section 140A and 140B of the Consumer Credit Act. I can however make a wide range of awards, and could, if I thought it fair and reasonable to do so, require a lender to, for example, refund loan payments or write off a loan. I do not believe however that I should do so here.

Affordability

Mrs P says that Honeycomb did not properly assess the affordability or suitability of the loan. It is however clear from the evidence that Honeycomb has submitted that it did obtain information about Mr and Mrs P's income and expenditure. And I have seen no evidence to suggest that Mrs P had had any difficulty making payments. It does not follow of course that proper checks were made, but in the circumstances I am not persuaded that more detailed checks would have led to a different lending decision or a different outcome.

I invited both parties to make further submissions, if they wished to do so. Honeycomb had nothing further to add, but Mrs P did make further arguments. As well as repeating some of her earlier submissions, she said, in summary:

- In breach of regulation 14(3) of the Timeshare Regulations, the product had been sold as an investment. Mrs P was told it could be sold at a profit and that accommodation could be rented out to meet the costs of purchase.
- Also in breach of the Timeshare Regulations, the necessary 14-day cooling-off period had not been provided.
- She had been assured that annual fees would increase by no more than inflation.

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.

I shall largely confine my comments here to the further submissions made after I issued my provisional decision. I have not however seen anything which would cause me to alter the views set out in my provisional decision and which I have quoted above.

I note first of all that, while Mrs P's representatives have made further arguments, they have provided no new evidence for me to consider.

Mrs P says that the timeshare product was sold as an investment, contrary to regulation 14(3). But Mr and Mrs P signed a declaration at the point of sale which included these statements:

"*2. I/We understand that this is an Infiniti Points based holiday purchase and I/we believe that it meets our future holiday needs that I/we will be able to use and enjoy.*

…

15. I/we understand that I/we may sell our Infiniti Points at any time for any price, providing our annual fees and finance (if applicable) is paid up to date and correct transfer of membership is completed as required. However, I/We also understand that I/we have not entered into this purchase purely for a wider investment opportunity or financial gain.

16. MGM Muthu Hotels does not undertake the responsibility of guaranteeing any rental to third parties. In any case the member is obliged to notify MGM Muthu Hotels of the occupants' details."

In my view this shows that, far from marketing the timeshare as an investment, the seller sought to make it clear to Mr and Mrs P that it was anything but. They were buying a holiday product to meet their future needs, not something to sell at a profit. Their use of the timeshare indicates that they understood that.

The allegation that no cooling-off period was provided is equally contradicted by the written evidence. The purchase contract included (on the same page as a template withdrawal notice):

"The consumer has the right to withdraw from this contract within 14 calendar days without giving any reason.

The right of withdrawal starts from 11/09/18 .

Where the consumer has not received this form, the withdrawal period starts when the consumer has received this form but expires in any case after one year and 14 calendar days.

Where the consumer has not received all the required information, the withdrawal period starts when the consumer has received that information, but expires in any case after three months and 14 calendar days.

To exercise the right of withdrawal, the consumer shall notify the trader using the name and address indicated below by using a durable medium (e.g. written letter sent by post, e-mail). The consumer may use this form, but it is not obligatory.

Where the consumer exercises the right of withdrawal, the consumer shall not be liable for any costs.

In addition to the right of withdrawal, national contract law rules may provide for consumer rights, eg, to terminate the contract in case of omission of information."

Mr and Mrs P's initials appear on the same page.

Honeycomb provided Mrs P with pre-contract information about the loan. It included, in a section headed "*Right of withdrawal*":

"*You have the right to withdraw from this agreement undersection 66A of the Consumer Credit Act 1974, without giving a reason, by writing to us at [address], or calling us on [telephone number] or emailing us at [email address]. Your right of withdrawal will start on the day after the later of the following events (a) the day the agreement is made; (b) the date on which we tell you that we have signed the agreement or (c) the date on which you receive a copy of the executed agreement. The withdrawal period will end 14 days after that day*."

Mrs P also received an explanation of the loan's key features, which included:

"*6. RIGHT TO WITHDRAW*

You have the right to withdraw from the agreement within 14 days, without giving a reason, by writing to us at [address], or calling us on [telephone number] or emailing us at [email address]. Your right of withdrawal will start on the day after the later of the following: (a) the day the agreement is made; (b) the date on which we tell you that we have signed the agreement or (c) the date on which you receive a copy of the executed agreement. You must repay all of the credit provided to you under the agreement, together with the applicable interest, without delay and in any event within 30 days of the day that you tell us that you wish to withdraw. Interest will be charged on the amount of credit at the interest rate set out in the agreement from the date the agreement was made until the date the credit is repaid. We will tell you when you contact us how to repay the credit and interest (if any) to us. The daily amount of interest you will have to pay is £4.80."

And the executed loan agreement included:

"*You have the right under section 66A of the Consumer Credit Act 1974 to withdraw from this agreement without giving any reason before the end of 14 days beginning with the day after the later of either (a) the day on which the agreement is made or (b) the date on which we tell you that we have signed the agreement or (c) the date on which you receive a copy of the executed agreement. If you wish to withdraw you must give us notice by one of the following methods. Oral notice must be given to us by telephoning us on [telephone number].*

Alternatively, if you send notice by fax it must be sent to [fax number], by email to [email address] or you may post notice to or deliver notice by hand to [address]. If you do give us notice of withdrawal, you must repay to us the whole of the credit without delay and in any event by no later than 30 days after giving notice of withdrawal. You will also have to pay interest accrued on the credit from the date the agreement was made until the date you repay it. Interest will be charged at an amount of £4.80 per day. If you wish to pay by debit card please telephone us on [telephone number]. If you wish to pay by cheque please send it by first class post to us at [address] and allow 10 working days from the day you post the cheque to us to allow us to process the payment."

In my view, the evidence that Mrs P was given a cooling-off period – in respect of both the purchase contract and the loan – is not just persuasive, but convincing, and it is surprising that those representing her have sought to argue otherwise.

As far as the annual fees are concerned, the pre-contractual information said this:

"Procedure for calculating future annual Membership Fees and Points Fees:

Members are responsible for payment of all annual Membership Fees and Points Fees, and all maintenance and other fees payable by the Member to his Home Resort or Home Group in respect of any associated Ceded Accommodation.

The total of all Points Fees shall be based on the Developer's estimate of the total costs of the Club in respect of, inter alia, the management fees due to the Resorts and corresponding to the Accommodation available within the Club, the cost of using Alternative Accommodation.

The total of all Membership Fees shall be based on the Developer's estimate of the total cost of running, administrating, managing and supervising the Reservations operation and other services provided by it.

Individual annual Points Fees shall be calculated by reference to the number of Points rights held by a Member as a proportion of the total Points rights allocated to Members. The Developer reserves tins right to vary the basis upon which individual Membership Fees or Points Fees are calculated which may inter alia include a composite! fee structure including the RCI Enrolment Fee, Transaction Fee and External Exchange Fee if considered to be appropriate by the Developer."

Whilst the fees are linked to the costs of running the resorts, therefore, they are not directly linked to a specified rate of inflation. Given resorts are located in different countries, it is difficult to see how they could be. I do not believe that Mrs P was told that there would be a direct link to a specific measure of inflation. And, as I noted in my provisional decision, Mr and Mrs P signed a declaration to say that they had not relied on anything which was not in writing; and they were, of course, familiar with the fee structure and changes.

In the circumstances, I do not need to consider whether any changes to the annual fees were or were not in line with any particular rate of inflation in any of the countries where the resorts are situated.

My final decision

For these reasons, my final decision is that I do not uphold Mrs P's complaint and do not require Oplo PL Ltd to take any further steps to resolve it.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs P to accept or reject my decision before 25 October 2023.

Mike Ingram
Ombudsman