

The complaint

Mr P complains that Oplo PL Limited won't refund to him the money that he paid for a holiday club membership. He's being helped with his complaint by his daughter.

What happened

Mr P entered into a fixed sum loan agreement with a finance provider in March 2019 for a loan to pay for a holiday club membership. The loan was for £13,950, which was the purchase price of the membership, and Mr P agreed to make 179 monthly payments of £142.40 and a final payment of £143.47 to the finance provider.

Mr P contacted the finance provider 22 days later and said that he wanted to cancel the loan. The finance provider said that the withdrawal period had ended. Mr P then complained to the finance provider about the liquidation of the holiday company, that the loan had been mis-sold to him and the way that he'd been treated. It issued final response letters to him in September and October 2022 in which it said that another holiday company had replaced the holiday company and the membership remained available to Mr P and his wife, the loan hadn't been mis-sold to him and there was no evidence that it had treated him poorly.

Mr P wasn't satisfied with its response so complained to this service. Our investigator recommended that Mr P's complaint should be upheld. He thought that it was likely that a misrepresentation had taken place during the sale of the membership and that a court would conclude that an unfair debtor-creditor relationship had arisen as a result of what looked to be a very significant imbalance in knowledge and understanding between the parties to the agreement at the point of sale. He recommended that the finance provider should: refund all repayments made under the loan agreement, with interest, and cancel the loan agreement; refund any annual maintenance fees, with interest; and arrange for the membership to be surrendered or cancelled or make other such arrangements so that there was no ongoing liability for maintenance or other charges for Mr P and his wife under that agreement.

Mr P's loan has now been transferred to Oplo and it has assumed the finance provider's obligations under the loan agreement. It has asked for Mr P's complaint to be considered by an ombudsman. It has explained why it doesn't consider that the membership was misrepresented to Mr P and his wife. It says that they were at the compliance and signing meeting of their own free will and were able to leave the meeting at any time. It says that Mr P and his wife acknowledged the information provided, including their right to withdraw from the agreements, and clearly state that they are happy with the arrangement.

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 the outcome recommended by our investigator for these reasons:

- Mr P used credit, in the form of the loan from the finance provider, to pay for the membership and the complaint that he's made to this service has been considered under sections 75 and 140A of the Consumer Credit Act 1974;

- 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 Mr P'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 his claims was fair and reasonable in the circumstances;
- although Mr P and his wife were on holiday when they entered into the agreements, I consider it to be clear from the evidence that's been provided that they don't take regular holidays and they've not used the membership;
- I'm not persuaded that a holiday club membership with a purchase price of £13,950 and annual maintenance fees was likely to have been suitable for them;
- Oplo has provided a video recording of the compliance and signing meeting and I consider it to be clear from that video that Mr P and his wife didn't properly understand the membership that they were buying – although the holiday company's representative explained it to them again, I'm not persuaded that it's likely that they understood what they were buying;
- Mr P and his wife signed a right to withdraw form at that signing meeting - the holiday company's representative asked them to sign the form to show that they'd been given that information but there was no mention in that meeting of the time period in which they could withdraw from the agreements;
- Mr P contacted the finance provider 22 days after he'd signed the loan agreement because he wanted to cancel the loan – that was outside of the 14 day period in which he could withdraw from the agreements but I consider that his request to cancel the loan at that time is further evidence that the membership wasn't suitable for him and his wife and that they hadn't understood the way that the membership works;
- this is a finely balanced complaint, but having considered all of the evidence, I agree with our investigator that Mr P's complaint should be upheld as I'm persuaded that the relationship between Mr P and the finance provider was unfair and I consider it to be more likely than not that a court would find that there was an unfair relationship between the finance provider and Mr P in these circumstances and that it would require Oplo to repay to Mr P the amount that he's paid under the loan agreement;
- the holiday company has stopped trading - which would be a breach of contract - but the finance provider says that a different management company has been appointed to provide the holiday club membership and that it remains available to Mr P and his wife;
- I consider that to be a suitable remedy for the breach of contract and I'm not persuaded that Oplo would have any further liability to Mr P under section 75 arising from that breach of contract - and I'm not aware of any other breach of contract by the holiday company;
- our investigator thought that the membership had been misrepresented to Mr P and his wife but, as I've concluded that it's more likely than not a court would find that there was an unfair relationship between the finance provider and Mr P, I don't consider that there's any need for me to make a finding as to whether the membership was misrepresented to Mr P; and

- I don't consider that the finance provider's response to Mr P's section 140A claim was fair and reasonable and I find that it would be fair and reasonable in these circumstances for Oplo to take the actions described below.

Putting things right

I find that it would be fair and reasonable for Oplo to take the actions recommended by our investigator. I've not seen any evidence to show that the finance provider or Oplo has recorded any adverse information about the loan agreement on Mr P's credit file – but if any such information has been recorded, I consider that it would also be fair and reasonable for Oplo to ensure that that information is removed.

My final decision

My decision is that I uphold Mr P's complaint and I order Oplo PL Limited to:

1. Refund to Mr P all of the payments that he's made under the fixed sum loan agreement.
2. Cancel the loan agreement at no further cost to Mr P.
3. Reimburse Mr P for any annual maintenance fees that he and his wife have paid to the holiday company in relation to their membership.
4. Arrange for Mr P and his wife to be released from the membership and any further liability arising from it – and to reimburse them for any such liability that they do incur.
5. Remove any adverse information that it or the finance provider has recorded on Mr P's credit file relating to the loan agreement.
6. Pay interest on the amounts to be paid to Mr P under 1 and 3 above at an annual rate of 8% simple from the date of each payment to the date of settlement.

HM Revenue & Customs requires Oplo to deduct tax from the interest payment referred to above. Oplo must give Mr P a certificate showing how much tax it's deducted if he asks it for one.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 30 August 2023.

Jarrold Hastings
Ombudsman