

## **The complaint**

Mrs A complains that Oplo PL Limited won't refund to her the money that she paid for some holiday club membership credits under a fixed sum loan agreement. Her husband is also involved with her complaint.

## **What happened**

Mrs A entered into a fixed sum loan agreement that she electronically signed in August 2018 to pay for some holiday club membership credits. The price of the credits was £30,000 and the loan was for that amount. Mrs A agreed to make 179 monthly payments of £306.24 and a final payment of £307.22 to the finance provider.

Mrs A says that she raised mis-selling concerns with the finance provider, using a third-party, in November 2019 but the finance provider says that it's been unable to locate any correspondence about Mrs A's concerns from November 2019. Mrs A did complain to the finance provider in April 2021 and said that the loan was sold as an investment to be sold in January 2020 which hadn't happened so she'd stopped her loan repayments in March 2020.

The finance provider said that the credits weren't marketed as anything other than credits which can be exchanged for rights of occupation and use in a unit of accommodation or a yacht or use of other lifestyle products. It said that the resale facility for the credits would be available from 2023 and they shouldn't be considered to be an investment. It said that the management company had ceased to trade but a new management company had been appointed to service the membership in accordance with Mrs A's contract.

Mrs A wasn't satisfied with its response so complained to this service. She says that she was forced to sign the loan agreement and that the holiday company refused to sell the investment. Our investigator didn't recommend that her complaint should be upheld. She said that she'd seen no evidence to suggest that a complaint was sent to the finance provider in November 2019. She wasn't persuaded that there had been a misrepresentation at the time of sale and she said that she'd not seen evidence to suggest that the loan was mis-sold to Mrs A.

Mrs A has asked for her complaint to be considered by an ombudsman. She says that the salesman convinced her that the credits were an investment linked to a timeshare and were a better investment to pay off her and her husband's loans and realise a profit. She says that, after she cancelled her loan repayments, the holiday company said that the credits would be used to pay off the loan and, in January 2021, it sold some of her credits – so the sale of the credits started before 2023. Mrs A's loan has been transferred to Oplo and it has assumed the finance provider's obligations under the loan agreement.

## **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:

- I've seen no evidence to support what Mrs A says about a claim being made by a third-party to the finance provider in November 2019 so I'm not persuaded that there's enough evidence to show that the finance provider acted incorrectly in connection with any such claim;
- Mrs A used credit, in the form of the loan from the finance provider, to pay for the credits and I've considered the complaint that she's made to this service 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 Mrs A'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 A has also referred to another finance provider – but her complaint is made about the loan that was made to her in August 2018 by the finance provider (and which has now been transferred to Oplo) and I'm unable to consider any issues relating to another finance provider in this decision;
- I've only been provided with limited information about the purchase of the credits in August 2018 but the finance provider has provided the rules and trust deed relating to the credits and the standard information form that was provided to purchasers;
- it has also provided evidence from the holiday company which says that Mrs A attended a compliance interview where every aspect of her purchase was explained to her prior to signing the documentation and that she received copies of all the contractual documentation, including the right to withdraw and 14 day cooling-off period but it didn't receive any cancellation request so the loan was activated;
- the standard information form says *"The resale facility will be available to be applied for as of the year 2023 and cannot be relied upon as the basis for entering into a Membership. Resale values or timeframes cannot be guaranteed and are subject to offer and demand"*;
- Mrs A has provided extracts from her husband's correspondence with the holiday company in July 2020 and January 2021 in response to his e-mail about the direct debit payment being cancelled in which it says: *"Your pending loan balance can be set off against some of your [credits]"*; and: *"I can take 2300 [credits] and close off the loan you have with us. Later on you can also list some of your [credits] for resale. Regarding the annual membership fee for 2021 which is £1,500, we can deduct the yearly minimum usage of 1000 [credits] and set it off against the fee"*;
- that correspondence was with the holiday company and not with the finance provider – Mrs A's loan was with the finance provider and I don't consider that the holiday company would have been discussing the terms of the loan repayments with Mrs A or her husband – I consider it to be more likely that those extracts relate to annual membership fees that would have been payable by Mrs A to the holiday company;

- I've seen no evidence to show that the finance provider agreed that the credits could be sold to clear (or reduce) Mrs A's loan from it;
- I'm not persuaded that there's enough evidence to support Mrs A's claims that the credits were sold to her as an investment - I consider it to be more likely than not that Mrs B had agreed that the resale facility wouldn't be available until 2023 and I don't consider that the e-mails from the holiday company are enough to show that it was operating a resale facility in January 2021;
- Mrs A has provided an extract from a communication from the new holiday company in which it said that it was creating a new resale service which it expected to launch some months later – but that doesn't show that there's been a breach of contract or misrepresentation by the holiday company;
- I don't consider that there's enough evidence to show that Mrs A was induced into buying the credits and entering into the loan agreement by misrepresentations made by the holiday company or that the credits or the loan were mis-sold to her;
- the holiday company has stopped trading which would be a breach of contract, but the holiday club is now operated by another holiday company and I understand that Mrs A has kept all her rights under her contract and that the other holiday company continues to offer a full service for members;
- 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 Mrs A under section 75 arising from that breach of contract;
- Mrs A referred in her complaint form to being forced to sign the loan agreement but she hadn't referred to that in her complaint to the finance company in April 2020 and I've seen no evidence to support such a claim – so I'm not persuaded that there's enough evidence to show that Mrs A was forced to sign the loan agreement or that she was unduly pressured into buying the credits or entering into the loan agreement;
- I'm not persuaded that there's enough evidence to show that the relationship between Mrs A and the finance provider was unfair and I don't consider it to be likely that a court would find the relationship to be unfair;
- I consider that the finance provider's response to Mrs A's complaint was fair and reasonable and I'm not persuaded that there's enough evidence to show that it has acted incorrectly in its dealings with Mrs A;
- Mrs A has provided a copy of an e-mail from Oplo that she received in November 2022 in which it said that the arrears on her account were £9,493.44 – I suggest that Mrs A contacts Oplo to try to agree a repayment arrangement for the amount that she owes to it, and if she's experiencing financial difficulties she should explain those difficulties to Oplo – it's required to respond to any such difficulties positively and sympathetically; and
- I sympathise with Mrs A for the issues that she's described but I find that it wouldn't be fair or reasonable in these circumstances for me to require Oplo to refund to her any of the money that she paid for the holiday club membership credits, to cancel her 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 A's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs A to accept or

reject my decision before 20 March 2023.

Jarrold Hastings  
**Ombudsman**