DRN-3987052

The complaint

Mr W complains that Oplo PL Limited won't refund to him the money that he paid for some holiday club membership points. He's being represented in his complaint by a claims management company.

What happened

Mr W and his wife had purchased a total of 350,001 membership points in a holiday club between about May 2009 and May 2016. They paid a total of £48,826 for those points. They entered into a purchase agreement with the holiday company in October 2018 to purchase 3,000 more points. The purchase price of those points was £14,950 and they also traded-in 40,000 of their existing points to the holiday company. Mr W entered into a fixed sum loan agreement with the finance provider for a loan of £14,950. He agreed to make 179 monthly repayments of £152.61 and a final payment of £152.95 to the finance provider.

Mr W's representative made claims on behalf of Mr W to the finance provider in March 2021 under sections 75 and 140A of the Consumer Credit Act 1974 and about irresponsible lending. It included particulars of Mr W's complaint and a witness statement from Mr W. The finance provider didn't provide a substantive response to those claims so a complaint was made to this service.

The finance provider then said that Mr W has been a member of the holiday club since 2009 and that he was entitled to what was signed for on his last purchase in October 2018 when the holiday company waived some annual fees. It said that if he didn't want to carry on with the purchase, there was an option of a 14-day cooling down period which was stated in the contract that was signed. It said that it was unable to agree that the timeshare had been mis-sold. Mr W's representative provided its comments to this service on the finance provider's response.

Our investigator recommended that Mr W's complaint should be upheld. He thought that it was likely that a court would conclude that there was an unfair debtor–creditor relationship as the evidence suggested that the points were marketed and sold to Mr W as an investment. He recommended that the finance provider should: refund all of the loan payments and cancel the loan; refund the proportion of the management charge relating to the purchase made in October 2018; pay interest on those refunds; and remove any adverse information in relation to the lending from Mr W's credit file. As he'd upheld Mr W's complaint, he said that he hadn't considered Mr W's claim under section 75 or about the affordability of the loan.

Mr W's loan was transferred to Oplo in August 2022 and it has asked for this complaint to be considered by an ombudsman. It says that it doesn't believe that there's any evidence to support the claim made by Mr W that he purchased the points as an investment and that the sale was misrepresented. It says that Mr W's recollection is unclear as evidenced by the fact that he can't recall certain events surrounding his reasoning for the purchase of a separate VIP holiday week or agreeing to the 15 year loan term. It says that he had the opportunity to exercise his right of withdrawal but chose not to do so and the pre-contract credit information is clear regarding the repayments being over a term of 180 months.

Mr W's representative has provided a copy of a termination notice that Mr W has received from the holiday company following his failure to pay the management charges and says that it has now elected to enforce the foreclosure provisions in the contract and served termination notices. It says that the foreclosure clause and the steps taken by the holiday company to exercise the same gives rise to an unfair relationship and the foreclosure clause also falls foul of the Unfair Terms in Consumer Contracts Regulations.

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 our investigator that Mr W's complaint should be upheld for these reasons:

- Mr W and his wife had purchased a total of 350,001 membership points between about May 2009 and May 2016 and in October 2018 they entered into a purchase agreement to buy 3,000 more points for a purchase price of £14,950 and they also traded-in 40,000 of their existing points;
- the holiday company waived its points fees for 2020 and confirmed that Mr W and his wife would be able to surrender their points (partially or totally at no additional cost) from their fifth year of membership;
- Mr W and his wife also signed the holiday company's memorandum of understanding which said that, after three years, they may trade 300,000 points against any future properties that might become available for sale through the holiday company or its partners;
- Mr W and his wife also paid £3,000, using a credit card, for a VIP week - but Mr W says that he can't recall why they would pay £3,000 for it when they had 350,001 points available on their account;
- Mr W wrote at that time that he: *"wasn't planning on buying any more [points] however following a well explained sales pitch we agreed to move to [the] new scheme";*
- Mr W and his wife already had 350,001 points and I'm not persuaded that it's likely that they would have bought more points to use for their holidays unless they understood that they'd be able trade those points for an interest in a property;
- nor am I persuaded that it's likely that Mr W and his wife would have agreed to pay £14,950 and to trade-in 40,000 of their existing points for 3,000 more points unless they understood that they'd be able trade those points for an interest in a property;
- Mr W says in his witness statement that, after the purchase in October 2018, he and his wife were liable for an annual maintenance fee of £2,832.31 and he provided a copy of the invoice for that amount from the holiday company – I'm not persuaded that it's likely that they would have been prepared to pay that amount each year unless they understood that they'd be able trade those points for an interest in a property;
- Mr W has provided a detailed description in his witness statement of the scheme proposed by the holiday company;
- the particulars of complaint say that the entry into the loan and the related purchase agreement has resulted in there being an unfair relationship between Mr W and the finance provider and that regard should be had to the misrepresentations (including

that Mr W and his wife would be able to convert the points into an interest in land), the holiday company's sales practices, and breaches of the Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010;

- those regulations prohibit a holiday company from marketing or selling a proposed timeshare contract or long-term holiday product contract as an investment;
- 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 W's claim under sections 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 claim was fair and reasonable in the circumstances;
- Mr W electronically signed the loan agreement with the finance provider and, although he says that he would never have signed up for a 15 year loan, he confirmed that he'd received the pre-contract credit information which said that the duration of the loan was 180 months and he agreed to make 180 monthly payments to the finance provider;
- I consider it to be more likely than not the holiday company misrepresented to Mr W and his wife that the points were an investment, that they were induced into entering into the purchase agreement by that misrepresentation and that they suffered a loss as a result of the misrepresentation because they paid a further £14,950 for the points that it's more likely than not that they wouldn't have paid if there hadn't been a misrepresentation;
- I also consider it to be more likely than not the points and the purchase agreement were sold to Mr W and his wife in October 2018 as an investment, in breach of the applicable regulations;
- I consider that the misrepresentation and breach of the regulations caused Mr W's relationship with the finance provider to be unfair and I consider it to be more likely than not that a court would conclude that there was an unfair relationship between Mr W and the finance provider in these circumstances;
- as I consider that there was an unfair relationship between Mr W and the finance provider, I haven't considered any liability that Oplo may have to Mr W under section 75 or his claim that the finance provider lent to him irresponsibly; and
- I don't consider that the finance provider's response to Mr W's section 140A was fair or reasonable and I find that it would be fair and reasonable for Oplo to take the actions described below.

Putting things right

Our investigator recommended that the finance provider should: refund all of the loan payments and cancel the loan; refund the proportion of the management charge relating to the purchase made in October 2018; pay interest on those refunds; and remove any adverse information in relation to the lending from Mr W's credit file.

I find that it would be fair and reasonable for Oplo to refund to Mr W all of the payments that he's made under the fixed sum loan agreement that he electronically signed in October 2018, with interest, and that it should cancel the loan agreement at no further cost to Mr W and write-off any outstanding amount due from him.

I find that it would also be fair and reasonable for Oplo refund to Mr W the proportion of the management charges that relate to the purchase of the points that he and his wife made in October 2018, with interest.

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 W's credit file – but if any such information has been recorded, I consider that it would be fair and reasonable for Oplo to ensure that that information is removed.

Mr W's representative has provided a copy of the termination notice that was sent to Mr W. I'm not persuaded that it would be fair or reasonable for me to require Oplo to take any further action as a result of that notice.

My final decision

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

1. Refund to Mr W all of the payments that he's made under the fixed sum loan agreement that he electronically signed in October 2018.

2. Cancel the loan agreement at no cost to Mr W and write-off any outstanding amount due from him.

3. Refund to Mr W the proportion of the management charges that relate to the purchase of the points that he and his wife made in October 2018.

4. Remove any adverse information about the loan agreement that the finance provider or it has recorded on Mr W's credit file.

5. Pay interest on the amounts at 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 to be made to Mr W and Oplo must give him 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 W to accept or reject my decision before 21 August 2023.

Jarrod Hastings
Ombudsman