

The complaint

Mr H complains that he and his wife were mis-sold a points-based timeshare product in 2012. Because the purchase was funded in part with Mr H's Sygma Bank credit card, issued by Creation Financial Services Limited, he says that he has a claim against Creation in the same way as he does against the seller.

Mr H has been represented in bringing his claim against Creation and in referring his complaint to this service. Any references I make to his submissions or evidence include submissions made or evidence provided on his behalf.

What happened

Mr and Mrs H have been members of Diamond Resorts (Europe) Ltd ("Diamond Resorts") since 1998. Diamond Resorts is a points-based holiday club. Members buy points which they can exchange for holiday accommodation. Mr and Mrs H initially bought 20 points and a further 60 some time later.

Mr and Mrs H have explained that they were staying at a Diamond Resorts location in late 2012. They were invited to an update meeting, at which they expressed concern that the points they had did not enable them to use the standard of accommodation they had been led to expect would be available. They say they were told that they had been sold too few points and that they could not sell them – contrary to what they had been told several years earlier. The only way to get the most out of their membership would be to buy further points.

Under an agreement dated 16 November 2012 Mr and Mrs H bought a further 4,000 points. Following a restructure of the points system, that was equivalent to the 40 points they had bought originally. They paid £4,800, using Mr H's Sygma Bank credit card.

Mr and Mrs H say that there was no improvement in the service they received. They were still unable to book the holidays they wanted, and the standard of accommodation remained poor. In addition, maintenance fees increased to around eight times what they had been in 1998.

Mr and Mrs H were able to surrender their membership, on health grounds. However, they remained unhappy about what had happened when they had been members. They contacted Creation in October 2018 to say that they thought Mr H had a claim under section 75 of the Consumer Credit Act 1974. Creation did not think there was sufficient evidence to support a claim and declined to compensate Mr H. He referred the matter to this service.

One of our investigators considered what had happened but did not recommend that the complaint be upheld. She agreed with Creation that there was insufficient evidence to support a claim. Mr H did not agree and asked that an ombudsman review the case.

I did that and issued a provisional decision. I noted that, whilst Mr H's first contact with Creation in October 2018 indicated that it was a "complaint", it was in reality a *claim*. His complaint is that Creation did not meet the claim, not that one had arisen in the first place. My provisional decision continued:

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.*

"Credit" includes the use of a credit card account, and the arrangements under which suppliers are able to take credit card payments are, through membership of card schemes such as Visa and Mastercard, sufficient to constitute "pre-existing arrangements".

Mr and Mrs H's contract with Diamond Resorts included a provision requiring payment to be made to FNTC, a reference to First National Trust Company, a business registered in the Isle of Man which provides escrow and payment intermediary services. Mr H's credit card statement shows that the payment was made to FNTC.

The Consumer Credit Act does not expressly define "supplier", but I believe it can only be a reference to the party which provides goods or services. In this case, that was Diamond Resorts. I am not therefore persuaded that section 75 applies here. The payment was made by Creation under arrangements it had with FNTC, not with Diamond Resorts. But FNTC was not the supplier of services to Mr H; it simply collected payment.

Section 75 can apply where the supplier and the business which takes payment are "associates" of each other (defined in section 184 of the Consumer Credit Act). A company is an associate of another if one controls the other or if they are both controlled by the same people or by associates of those people.

I do not believe however that FNTC is an associate of Diamond Resorts. As I have indicated, it provides escrow and payment services – and has done for many years. In a recent High Court judgment¹ involving a similar scenario (but a different holiday club), counsel for the claimant accepted that FNTC was a separate entity from the club, and I believe it is in this case as well.

Mr H's claim against Creation was that Diamond Resorts had misled him into buying more points rights and that the effect of section 75 was that Creation was equally liable with Diamond Resorts for what it had said at the time of sale.

For the reasons I have explained, however, I do not believe that the necessary links of Mr H, Creation and Diamond Resorts were in place. It follows that section 75 does not apply and that Creation's decision to decline the claim was fair – even though it relied on different reasons in reaching that conclusion. Having reached that conclusion, I do not need to make any findings about the underlying misrepresentation claim, and I make no comment on it.

Mr H did not accept my provisional decision, noting – correctly – that complainants are not obliged to accept any decision of an ombudsman. He noted too that the judgment to which I referred might be overturned on appeal.

¹ *Steiner v National Westminster Bank Plc* [2022] EWHC 2519 (KB)

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 reviewed the case for a final time, however, I have reached the same conclusion as that set out in my provisional decision. I remain of the view that Creation's decision not to meet Mr H's claim was fair in the circumstances.

My final decision

For these reasons my final decision is that I do not require Creation Financial Services Limited to take any further steps to resolve Mr H's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 27 April 2023.

Mike Ingram
Ombudsman