

The complaint

Mrs T complains that Allium Money Limited won't refund to her the money that she paid for some holiday club membership points. Her husband is also involved in her complaint and she's being represented by a claims management company.

What happened

Mrs T and her husband had been members of a holiday club since 2005 and they entered into a purchase agreement with the holiday company in June 2019 to trade in a total of 108,000 of the membership points that they'd acquired and to purchase 74,000 of a different type of membership points. They also agreed to pay a net purchase price of £6,630 and Mrs T's husband entered into a fixed sum loan agreement with a finance provider for a loan of that amount.

Mrs T and her husband entered into another purchase agreement to buy 220,000 more membership points from the holiday company in March 2020. They agreed to pay a net purchase price of £19,665 and Mrs T entered into a fixed sum loan agreement with the finance provider for a loan of that amount. She agreed to make 59 monthly payments of £386.34 and a final payment of £385.88 to the finance provider.

Mrs T's representative made claims, on behalf of Mrs T, to the finance provider in November 2021 under sections 75 and 140A of the Consumer Credit Act 1974 about the March 2020 purchase. The representative's letter to the finance provider included claims that: the membership points were mis-sold to Mrs T and her husband and, but for the misrepresentations made to them, they wouldn't have purchased them and Mrs T wouldn't have entered into the loan agreement; the membership points were sold to Mrs T and her husband as an investment, contrary to the Timeshare Regulations, and under extreme sales pressure; the terms of the agreement are so egregious so as to be unfair and the payment of commission was hidden from view; and the holiday company didn't undertake a proper affordability check. Similar claims were also made to the finance provider by Mrs T's husband's representative relating to the June 2019 purchase.

The finance provider didn't respond to the claims about the March 2020 so Mrs T complained to this service. Her complaint form says that: the finance provider paid a commission to the holiday company which wasn't declared to her; the holiday company failed to conduct a proper assessment of her ability to afford the loan, unduly pressured her and her husband into entering into the purchase agreement and her into entering into the loan agreement and used aggressive commercial practices to pressure them; and the membership points were misrepresented to them; all rendering the loan agreement unfair pursuant to section 140A; and it said that the claim should also be considered under section 75. Mrs T's loan was then transferred to Allium Money.

Our investigator recommended that Mrs T's complaint should be upheld. He had recommended that Mrs T's husband's complaint about the June 2019 purchase should be upheld and he thought that the March 2020 was marketed as an investment in a similar manner to the June 2019 purchase. He recommended that Allium Money should: refund all of the loan payments and cancel the loan; refund any management charges relating to the membership points; pay interest on those refunds; remove any adverse information in relation to the lending from Mrs T's credit file; and arrange the cancellation of the purchase agreement with the holiday company (if it's still active), so that the membership points that Mrs T and her husband purchased are cancelled, along with any ongoing liability in relation to them.

Mrs T's representative has confirmed that Mrs T accepts our investigator's recommendation but Allium Money has asked for the complaint to be referred to an ombudsman for a decision. It says that the comments that it made regarding the June 2019 purchase also apply to this purchase and it has again referred to a decision issued by another ombudsman on a complaint, in what it says were similar circumstances, which wasn't upheld.

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 Mrs T's complaint should be upheld for these reasons:

- Mrs T and her husband had been members of the holiday club since 2005 and they entered into a purchase agreement with the holiday company in June 2019 to trade in a total of 108,000 of the membership points that they'd acquired and to purchase 74,000 of a different type of membership points - Mrs T's husband also entered into a loan agreement with the finance provider for a loan to pay the net amount due from them to the holiday company;
- they entered into another purchase agreement to buy 220,000 more membership points from the holiday company in March 2020 and Mrs T entered into a fixed sum loan agreement with the finance provider for a loan of £19,655;
- Mrs T and her husband had signed a memorandum of understanding with the holiday company in June 2019 which says: *"I/We understand that 3 years after the completion of this Purchase Agreement I/We may trade my/our [membership points] (fully or partially, at maximum of 300,000 points per property purchased) against any future properties that may become available for sale through [the holiday company] or its partners"*;
- Mrs T's husband says that the holiday company told them that they could use their points towards buying one of its properties which it would then rent out and the rent would be divided between them and would finance the purchase of the property – but they were then told in March 2020 that more points were needed for an investment purchase so they bought more points and another loan was arranged – and they realised in May 2020 that the scheme wasn't going to happen so they ended their membership in June 2021;
- the Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010 say: *"A trader must not market or sell a proposed timeshare contract or long-term holiday product contract as an investment if the proposed contract would be a regulated contract"*;
- Mrs T's claims include a claim under section 140A which 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 T'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 her claim was fair and reasonable in the circumstances;
- Allium Money has referred to a decision issued by another ombudsman on a complaint, in what it says were similar circumstances, which wasn't upheld – I've looked at that decision and the ombudsman wasn't persuaded that a significant reason that the purchaser entered into an agreement to purchase additional points was because he wanted to use them to purchase a property as he sought to surrender his membership before the option to purchase a property could be invoked;
- Mrs T's husband says that they realised in May 2020 that the scheme wasn't going to happen so they ended their membership in June 2021 and I'm persuaded that it's more likely than not that a significant reason for Mrs T and her husband purchasing more membership points in March 2020 was because of their understanding that they would be able to trade their membership points against a future property;
- I've seen no evidence to show that Mrs T and her husband were likely to have wanted 220,000 more membership points to use for their holidays in March 2020 and I don't consider it to be likely that they'd have ended their membership in June 2021 if they'd bought the membership points to use for their holidays;
- I consider it to be more likely than not the holiday company marketed and sold the membership points to Mrs T and her husband in March 2020 as an investment, in breach of the Timeshare Regulations, and I also consider it to be more likely than not that they wouldn't have entered into the purchase agreement and Mrs T wouldn't have entered into the loan agreement if the membership points hadn't been marketed and sold to them as an investment;
- I consider that the breach of the Timeshare Regulations caused Mrs T's relationship with the finance provider, and then with Allium Money, to be unfair and I consider it to be more likely than not that a court would conclude that there's an unfair relationship between Mrs T and Allium Money in these circumstances;
- as I consider that there's an unfair relationship between Mrs T and Allium Money, I haven't considered Mrs T's other claims relating to the March 2020 purchase; and
- Allium Money didn't respond to the claims that had been made to it so I don't consider that its response to Mrs T's section 140A claim was fair or reasonable and I find that it would be fair and reasonable for Allium Money to take the actions described below.

Putting things right

Our investigator recommended that Allium Money should: refund all of the loan payments and cancel the loan; refund any management charges relating to the membership points; pay interest on those refunds; remove any adverse information in relation to the lending from Mrs T's credit file; and arrange the cancellation of the purchase agreement with the holiday company (if it's still active), so that the membership points that Mrs T and her husband purchased are cancelled, along with any ongoing liability in relation to them.

I find that it would be fair and reasonable for Allium Money to refund to Mrs T all of the payments that she's made under the fixed sum loan agreement that she electronically signed in March 2020, with interest, and that it should cancel the loan agreement at no further cost to Mrs T and write-off any outstanding amount due from her.

I find that it would also be fair and reasonable for Allium Money to refund to Mrs T any management charges that have been paid relating to the membership points that she and her husband purchased in March 2020, with interest (subject to Mrs T providing evidence of those charges to Allium Money).

I've not seen any evidence to show that Allium Money (or the finance provider) has recorded any adverse information about the loan agreement on Mrs T's credit file – but if any such information has been recorded, I consider that it would be fair and reasonable for Allium Money to ensure that that information is removed.

Mrs T's husband says that they ended their membership in June 2021 but I find that it would also be fair and reasonable for Allium Money to ensure that the purchase agreement with the holiday company has been cancelled - so that the membership points that Mrs T and her husband purchased in March 2020 are cancelled, along with any ongoing liability in relation to them.

My final decision

My decision is that I uphold Mrs T's complaint and I order Allium Money Limited to:

1. Refund to Mrs T all of the payments that she's made under the fixed sum loan agreement that she electronically signed in March 2020.
2. Cancel the loan agreement at no cost to Mrs T and write-off any outstanding amount due from her.
3. Refund to Mrs T any management charges that have been paid relating to the membership points that she and her husband purchased in March 2020, with interest (subject to her providing evidence of those charges).
4. Remove any adverse information about the loan agreement that has been recorded on Mrs T's credit file.
5. Ensure that the purchase agreement with the holiday company has been cancelled.
6. 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 Allium Money to deduct tax from the interest payment to be made to Mrs T and Allium Money must give her a certificate showing how much tax it's deducted if she asks it for one.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs T to accept or reject my decision before 18 March 2024.

Jarrold Hastings
Ombudsman