

The complaint

Mr B complains that American Express Services Europe Limited won't refund to him the money that he paid for some holiday club membership credits. He's being represented in his complaint by a claims management company.

What happened

Mr B and his wife entered into a membership application agreement in April 2018 to buy 8,000 level two holiday club membership credits from a holiday company. The membership price was £13,000 and Mr B made payments of £7,000 and £6,000 to pay the membership price later that month using his American Express credit card.

Mr B's representative, on behalf of Mr B, made a claim to American Express in July 2021 under section 75 of the Consumer Credit Act 1974. The representative's letter to American Express included claims that: the membership credits were mis-sold to Mr B and his wife and, but for the misrepresentations made to them, they wouldn't have purchased them; the holiday company is now in liquidation so can't provide the service sold and is in breach of contract; and the membership credits were sold to Mr B and his wife as an investment, contrary to the Timeshare Regulations and under extreme sales pressure using aggressive commercial practices.

American Express asked Mr B's representative to provide further information about the claim in order for its investigation to continue but no further information was provided. Mr B then made a complaint to this service. His complaint form says that: the membership credits were sold to him and his wife under significant pressure, contrary to the Consumer Protection from Unfair Trading Regulations and they were pressured under time and commercially aggressive sales practices; the membership credits were mis-sold to them by the holiday company and, but for the misrepresentations made to them, they wouldn't have purchased them and they were pressured into entering into the membership application agreement; the holiday company failed to take such steps as would be reasonable to expect it to do so in the interests of fairness and it misrepresented the membership credits and their benefits and pressured Mr B and his wife into purchasing a product which was unsuitable and failed to provide the advantages promised.

Our investigator didn't recommend that Mr B's complaint. He considered whether Mr B's relationship with American Express was unfair under section 140A of the Consumer Credit Act but said that he hadn't seen enough to suggest that the relationship was unfair and he wasn't persuaded that a court would reach the conclusion that it was unfair. He wasn't persuaded that there was a misrepresentation at the time of sale or that there had been a breach of contract. He also said that American Express had requested further information to evidence the claim but he couldn't see that it was provided.

Mr B disagrees with our investigator's recommendation and a request has been made for an ombudsman to look at his complaint. Mr B's representative has provided submissions in response to our investigator's recommendation which include a statement from Mr B that says:

“We were on holiday with our family and we were invited to a meeting with the sales team, whereby we could meet other members. This meeting lasted around 4 hours and we were told that the membership we had previously purchased was going to end, meaning that we would lose our entire investment. We were led to believe that the only option was to invest some more money into the [membership credits] system and allow us to use this scheme instead”;

which Mr B’s representative says is consistent with testimony given by other purchasers of holiday products from the holiday company. The submissions also say, in summary and amongst other things, that:

- the membership credits were sold as an investment that was extremely desirable and unused credits could easily be resold at which point Mr B and his wife were induced to trade in their existing holiday product and upgrade to what was represented at the time as a more desirable product that would enable them to sell their credits easily and exit their membership early whilst making a profit and recouping their earlier investment;
- the holiday company was obliged to follow the rules and regulations set out in the Timeshare Regulations which prohibited it from marketing or selling the membership credits as an investment but Mr B says it did exactly that, which is supported by the number of membership credits that they purchased exceeding the amount that they could have used for their own enjoyment; and
- the holiday company engaged in misleading commercial practices which caused Mr B and his wife to take a transactional decision that they wouldn’t have otherwise done.

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 B’s complaint shouldn’t be upheld for these reasons:

- Mr B’s claim was made under section 75 which 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);
- Mr B’s claim under section 75 is that there’s been a breach of contract by the holiday company and that the membership credits were misrepresented to him and his wife and that they wouldn’t have bought them if they hadn’t been misrepresented to them;
- I’m not determining the outcome of that claim in this decision as only a court would be able to do that but I’m considering whether or not American Express’s response to Mr B’s claim was fair and reasonable in the circumstances;
- Mr B’s representative’s July 2021 letter to American Express says that the holiday company is now in liquidation so can’t provide the service sold and is in breach of contract but I understand that the holiday club is now operated by a newly appointed club manager and that memberships remains available for members to use;
- I consider that the liquidation of the holiday company could be a breach of contract for which American Express might be liable under section 75 - but I consider the appointment of the new club manager to have been a suitable remedy for any breach of contract, and I’ve seen no evidence to show that Mr B and his wife’s use of their

membership credits has been adversely impacted by the liquidation of the holiday company;

- I'm not persuaded that there's enough evidence to show that there's been any breach of contract or regulation by the holiday company for which American Express would now be liable under section 75 in these circumstances;
- the July 2021 letter also says it was represented to Mr B and his wife by the holiday company that: their current holiday product was unsellable as part of the re-sale scheme and that they would require to purchase membership credits if they were to sell their product at a profit; the holiday company was ceasing to trade in timeshare apartments; there were numerous benefits to them, including that there was no fixed time period at which they would be required to access the holiday; it would be an excellent investment; the annual maintenance fees payable would increase greatly if they didn't convert to membership credits; and the membership credits were available for a greatly reduced discount price but only if purchased on that day;
- it also says that the membership credits were sold to Mr B and his wife as an investment, contrary to the Timeshare Regulations;
- Mr B's representative has provided a copy of the membership application agreement that Mr B and his wife signed in April 2018 and of the first annex to the agreement which sets out the payment terms but it hasn't provided the terms and conditions which are referred to in the agreement or any of the other documents that I consider it to be likely they would also have signed with the holiday company at that time;
- Mr B's representative has described in its July 2021 letter and in its submissions in response to our investigator's recommendation the ways in which it says that the membership credits were misrepresented to Mr B and his wife by the holiday company – but neither Mr B nor his representative has provided a detailed account of the circumstances in which the alleged misrepresentations were made, the conversations that took place or the information that was provided to Mr B and his wife before their April 2018 purchase;
- I'm not persuaded that there's enough evidence to show that the holiday company represented to Mr B and his wife that the membership credits were an investment, that the membership credits were misrepresented to them by the holiday company or that they were induced into entering into the membership application agreement by any such misrepresentations;
- nor am I persuaded that there's enough evidence to show that the holiday company marketed and sold the membership credits as an investment in breach of the Timeshare Regulations;
- the July 2021 letter says that the membership credits were also sold to Mr B and his wife under extreme sales pressure using aggressive commercial practices but I don't consider that those issues would constitute a breach of contract or misrepresentation for which American Express would be liable under section 75;
- our investigator considered whether Mr B's relationship with American Express was unfair under section 140A but said that he hadn't seen enough to suggest that the relationship was unfair and he wasn't persuaded that a court would reach the conclusion that it was unfair;
- the July 2021 letter says: *"We write in connection with our above-named client and to intimate a claim upon you under s.75"*; and Mr B's complaint form says: *"By virtue of s.75 ... the creditor is jointly and severally liable to our clients for any misrepresentations and breaches of contract made by the timeshare company and a*

claim can properly be made against the creditor”; but there was no reference in either that letter or the complaint form to a claim under section 140A;

- I can't see that a claim under section 140A has been made to American Express about its relationship with Mr B being unfair or that a complaint about its response to any such claim has been made to this service - so I can't consider a complaint about American Express's response to a section 140A claim in this decision and I make no finding on that issue;
- one of the criteria for a claim under section 75 is that there must be a debtor-creditor-supplier agreement but Mr B's credit card statement shows that the payments of £7,000 and £6,000 were made to an entity that isn't the holiday company so it's possible that there was no such agreement in place – but, as I'm not persuaded that there's been a misrepresentation or breach of contract for which American Express would be liable under section 75, I consider that there's no need for me to make any finding as to whether or not there was a debtor-creditor-supplier agreement in these arrangements;
- American Express asked Mr B's representative to provide further information about the section 75 claim that had been made to it in order for its investigation to continue but no further information was provided – I consider that it was fair and reasonable for it to ask Mr B's representative to provide further information and I don't consider that its response to the claims that had been made to it was unfair or unreasonable; and
- I sympathise with Mr B and his wife for the issues that they've had with their holiday club membership credits, but I find that it wouldn't be fair or reasonable in these circumstances for me to require American Express to refund to Mr B any of the money that he paid for the membership credits, to pay him any compensation or to take any other action in response to his complaint.

My final decision

My decision is that I don't uphold Mr B's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 15 March 2024.

Jarrold Hastings
Ombudsman