

The complaint

Mr U complains that he was misled into buying a timeshare product. Because his purchase was financed with payments from his credit card, issued by Vanquis Bank Limited, he says that he has a claim against it in the same way as against the seller.

Mr U has been represented by a firm of solicitors, so references to his arguments and submissions include those made on his behalf.

What happened

In October 2015 Mr and Mrs U were on holiday in Tenerife. Mr U says that they were compelled to attend a timeshare presentation – which they did.

Following the presentation, Mr and Mrs U signed a contract for the purchase of: membership of Club Marina; a one week floating timeshare; and membership of RCI (an established timeshare exchange service). The contract recorded:

- The joint sellers were TVE Tenerife Vacation Establishment and Perkus Management Establishment. Both companies were registered in Liechtenstein. Together, they were referred to as the “Founder Members”.
- The total price was reduced from €7,409 to €4,715.
- The first right of occupation would arise in 2016, and Mr and Mrs U’s annual week could be used until 2018.
- Mr and Mrs U would have to pay an annual maintenance fee, which at the time was €324 per week of ownership. Three years’ maintenance was included in the price.
- Three years’ membership of RCI was also included.

Included with the contractual documentation was a payment schedule. Mr and Mrs U would pay €1,347 on 26 October 2015, followed by five monthly payments of €673.60 beginning on 26 November 2015. In fact, three payments were made using Mr U’s credit card – one for €1,347 on 26 October 2015; one for €500 on 20 January 2016; and one for €1,000 on 25 January 2016. I have no information about any other payments made.

In or around December 2017 Mr U contacted Vanquis to complain about the sale of the timeshare and RCI membership. He said:

- He had been told that the seller would help him recover money he had spent on software which had enabled him and Mr U to obtain holiday certificates.
- He had been told the membership was for three years, but it was in fact for 55 years.

Vanquis did not accept Mr U’s claim. It said there was no evidence of either of the matters he had raised.

Mr U referred the matter to this service. Our investigator was broadly in agreement with Vanquis and did not recommend that the complaint be upheld. Mr U asked that an ombudsman review the case.

I did that and issued a provisional decision, in which I said:

Relevant legislation

Mr U's complaint about Vanquis arises from the actions of the seller of the timeshare at the time of sale. There are some circumstances in which the Consumer Credit Act 1974 gives a debtor rights against a provider of credit in respect of the actions of a supplier of goods or services.

I must determine Mr U's complaint by reference to what I consider to be fair and reasonable in all the circumstances – having regard, amongst other things, to any relevant law. I set out below extracts of the Consumer Credit Act which I consider to be most relevant in this case:

75 Liability of creditor for breaches by supplier

If the debtor under a debtor-creditor-supplier agreement falling within section 12(b) or (c) has, in relation to a transaction financed by the agreement, any claim against the supplier in respect of a misrepresentation or breach of contract, he shall have a like claim against the creditor, who, with the supplier, shall accordingly be jointly and severally liable to the debtor.

12 Debtor-creditor supplier agreements.

A debtor-creditor-supplier agreement is a regulated consumer credit agreement being—

...

(b) a restricted-use credit agreement which falls within section 11(1)(b) and is made by the creditor under pre-existing arrangements, or in contemplation of future arrangements, between himself and the supplier

...

11 Restricted-use credit and unrestricted-use credit.

(1) A restricted-use credit agreement is a regulated consumer credit agreement—

...

(b) to finance a transaction between the debtor and a person (the "supplier ") other than the creditor

...

In this case, I am satisfied that the first credit card payment financed (albeit only in part) the purchase of the timeshare. The other payments I have referred to do not however match the payment schedule set out in the contract, and it is not clear whether they were in fact part of the purchase price. It makes no difference, however, since it is sufficient for the purposes of section 75 that the purchase was funded in part with credit falling within section 12(b) or (c).

A credit card payment can fall within section 12(b) of the Consumer Credit Act and will generally do so if payment is taken by the supplier (rather than, say, by a trustee or agent).

Mr U's contract here was with the Founder Members. His credit card statements indicate however that payment was made to "Gastiland 2000 Costa del Sil ES". That is, the "pre-existing arrangements" under which the contract was financed were between Vanquis and that company, not between Vanquis and the supplier. The Founding Members were collectively the supplier.

Section 75 can apply where the contract is funded under pre-existing arrangements between the creditor (here, Vanquis) and an "associate" of the supplier, as defined in section

184 of the Consumer Credit Act. I have however seen no evidence to show such a link between the Founding Members and Gastiland 2000 Costa del Sil ES. My current view is therefore that section 75 has no application in this case.

Mr U's claims against the seller

Even if I were to take a different view on the application of section 75 (perhaps as the result of further submissions and evidence), I would not be inclined to uphold Mr U's complaint.

He says that he was told his timeshare contract would be for three years. It is quite clear however that it was. The final year of membership was to be 2018. Mr U has not explained why he thinks the contract was for 55 years or provided any evidence that he was committed to that period – for example, through demands for payment of fees after 2018.

Nor is there any evidence that the timeshare contract included a refund service in respect of any software or holiday certificates Mr U may have purchased previously. The contract he and Mrs U signed was for a three-year timeshare and club membership, along with RCI membership. Had they been told they were also getting a refund or similar service, funded by one or more of the credit card payments, I think there would be some evidence of that.

I invited both parties to make further submissions if they wanted to do so, but neither Mr U nor Vanquis had anything to add.

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.

As neither party has made any further arguments in response to my provisional decision, I see no reason to reach a different conclusion about the complaint. I stress however that, in reaching that conclusion, I have considered all the evidence and arguments afresh.

My final decision

For these reasons, my final decision is that I do not uphold Mr U's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr U to accept or reject my decision before 24 November 2023.

Mike Ingram

Ombudsman