

## **The complaint**

Miss D complains that Clydesdale Bank plc, trading as Virgin Money, won't refund to her the money that she paid for a holiday club membership. Her partner is also involved in her complaint and she's being represented by a claims management company.

## **What happened**

Miss D and her partner entered into a vacation membership purchase agreement in December 2018 to buy a holiday club membership from a holiday company. The purchase price was US\$22,940 and the purchase agreement shows that they made a down-payment of US\$5,104 so the balance to be financed was US\$17,828. They agreed to make 84 monthly payments of US\$314.85 to the holiday company and they also entered into a promissory note with the holiday company in which they promised to pay it US\$17,828 and to make 84 monthly payments of US\$314.85. Miss D provided her Virgin Money credit card details for the monthly payments and payments have been collected each month from her credit card account.

Miss D's representative, on behalf of Miss D, made claims to Virgin Money under sections 75 and 140A of the Consumer Credit Act 1974 in April 2022. The representative's letter to Virgin Money said that the holiday company had misrepresented the membership, breached the terms of the purchase agreement and Miss D's relationship with Virgin Money was unfair.

Virgin Money said that it appeared as though the holiday company had acted in line with the purchase agreement and it didn't agree that it had let Miss D down in a way that would give her a successful section 75 claim so it was unable to take her claim any further. Miss D complained to this service and her complaint form says that the holiday company is in breach of the purchase agreement by misrepresenting the membership to her and her partner and breaching the EU Timeshare Directive.

Our investigator didn't recommend that Miss D's complaint should be upheld. He said that he hadn't seen enough to suggest that the relationship between Miss D and Virgin Money was unfair and he wasn't persuaded that a court would reach the conclusion that the relationship was unfair. He also said that he wasn't persuaded that there was a misrepresentation at the time of sale or that there had been a breach of contract and he didn't think that Virgin Money was required to assess the affordability of individual transactions that were made using Miss D's credit card.

Miss D's representative says that Miss D doesn't agree with our investigator's recommendation and would like the matter referred to an ombudsman for a decision. Miss D says that she was told that the membership would allow her and her partner to stay in the hotel in a particular room type based on the level of membership sold to them, as well as additional discounts for other hotels via a partner company. She also says that they were advised that the room could also be rented out or listed for resale during unused times so it could be a means of making money and that the perception they took from the conversation was that on completion of payment it would be fully owned by them.

### **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 Miss D's complaint shouldn't be upheld for these reasons:

- Miss D's claims were made under sections 75 and 140A – section 75 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) and 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 those claims in this decision as only a court would be able to do that but I'm considering whether or not Virgin Money's response to Miss D's claims was fair and reasonable in the circumstances;
- Miss D and her partner entered into the vacation membership purchase agreement which said that they were: *"... entitled to accommodation and use of timeshare services ... in a specified unit ... in the project ..."*; and they also signed an understanding and acknowledgment which said: *"I have contracted for the right to use a studio vacation suite for 50 years from the date of my contract ... Neither I nor the Club will own the real property, land, or buildings of the Resort. I understand that I am not obtaining present or future title to them"*;
- the understanding and acknowledgement also said: *"I understand that I have a priority to request reservations from 24 to 10 months prior to the date of arrival. Upgrade requests for Holiday Season reservations may only be made 60 days or less prior to arrival"*;
- Miss D's representative's April 2022 letter says that it was represented to Miss D and her partner that they could book their holidays in advance and they were advised that it was an upgrade which would save them money – but availability was still scarce, prices were higher than they expected, the hotels weren't in their desired locations or weren't available for their required dates – and it says that they only used their membership once for a hotel;
- the letter also says that the holiday company sold the membership to Miss D and her partner as an investment;
- Miss D gave some further information about the issues with the membership in her response to our investigator's recommendation but neither Miss D nor her 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 them;

- I'm not persuaded that there's enough evidence to show that the membership was misrepresented to Miss D and her partner by the holiday company or that they were induced into entering into the purchase agreement by any such misrepresentations;
- nor am I persuaded that there's enough evidence to show that the holiday company sold the membership to Miss D and her partner as an investment - and the holiday company and the holiday club aren't located in Europe so I don't consider that the EU Timeshare Directive, or some of the other legislation to which Miss D's representative has referred, would apply to the sale of the membership;
- Miss D's representative's April 2022 letter also says that the holiday company breached the terms of the agreement but neither Miss D nor her representative has explained what provisions of the agreement have been breached and I understand that the membership remains available for Miss D and her partner to use;
- Miss D's representative has described the limited use that Miss D and her partner have had from their membership but I've seen no evidence to show that the membership isn't available to them on the terms set out in the purchase agreement so I'm not persuaded that there's enough evidence to show that there's been a breach of the purchase agreement by the holiday company for which Virgin Money would be liable under section 75 in these circumstances;
- one of the criteria for a claim under section 75 is that there must be a debtor-creditor-supplier agreement but, as Miss D's credit card statement shows that the payments under the purchase agreement were made to an entity that wasn't the holiday company, 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 Virgin Money 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;
- the April 2022 letter also says that Miss D's relationship with Virgin Money was unfair and it listed a number of points which it said made the agreement and the related agreement unfair – including that Miss D wasn't informed of the payment of any commission and that Virgin Money failed to carry out a sound and proper credit assessment;
- I've not been provided with Miss D's credit card agreement with Virgin Money but it's clear that she used her existing credit card to make the monthly payments due under the purchase agreement and the promissory note;
- Miss D has provided copies of her credit card statements and much of the information on the statements has been blocked out but it looks to me as though Miss D's credit limit was £7,600 and that she made the monthly payments (which were about £250 each month) using that credit limit;
- Virgin Money would be expected to have conducted a credit assessment before it made the credit available to Miss D (or when it increased her credit limit) but Miss D then chose to use her credit card to make payments under the purchase agreement and the promissory note and there would have been no requirement for Virgin Money to have made a further credit assessment for each of those payments;
- Virgin Money wasn't involved in the negotiations for the purchase agreement and I've seen no evidence to show that it had a relationship with the holiday company which would have involved the payment of any commission by it to the holiday company;
- I'm not persuaded that anything in the purchase agreement caused Miss D's relationship with Virgin Money under her credit card agreement to be unfair and I

don't consider it to be likely that a court would conclude that there was an unfair relationship between Miss D and Virgin Money in these circumstances;

- I sympathise with Miss D for the issues that she and her partner have had with their membership but I consider that it was fair and reasonable for Virgin Money not to uphold the claims that had been made to it; and
- I find that it wouldn't be fair or reasonable for me to require Virgin Money to refund to Miss D any of the money that she's paid under the purchase agreement, to pay her any compensation or to take any action in response to her complaint.

### **My final decision**

My decision is that I don't uphold Miss D's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss D to accept or reject my decision before 6 March 2024.

Jarrold Hastings  
**Ombudsman**