

## The complaint

Mr L complains that Santander UK plc won't refund to him the money that he paid for a holiday club membership. He's being represented in his complaint by a claims management company.

## What happened

Mr L and his wife entered into a membership purchase agreement in October 2017 to buy a holiday club membership from a holiday company. The purchase price was £5,250 and Mr L paid £1,000 of that amount using his Santander credit card later that month. A further £4,050 was paid by Mr L and his wife from their bank account and I've seen no evidence to show how the remaining £200 was paid.

Mr L's representative, on behalf of Mr L, made a claim to Santander in April 2023 under section 75 of the Consumer Credit Act 1974. It said that the membership was mis-sold to Mr L and his wife by the holiday company and, but for the misrepresentations made to them, they wouldn't have purchased it. It also said that: Mr L and his wife have found that the promises of flexibility haven't come to fruition, as they have found that holidays are always fully booked; the maintenance fees have increased dramatically in the past few years, and due to their retirement and reduced income, they are no longer financially viable; and Mr L's wife suffers from mobility issues which now means it's difficult to travel and use the membership.

Santander responded to that claim in detail and set out the reasons that it didn't uphold it. Mr L wasn't satisfied with its response so a complaint was made to this service. His complaint form says that: Mr L and his wife were sold the membership under significant pressure, contrary to the Consumer Protection from Unfair Trading Regulations; they were pressured under time and commercially aggressive sales practices; the membership was mis-sold to them by the holiday company and, but for the misrepresentations made to them, they wouldn't have purchased it; they were pressured into entering into the membership purchase agreement; the holiday company failed to take such steps as would be reasonable to expect it to take in the interests of fairness; it misrepresented the membership and its benefits and pressured Mr L and his wife into purchasing a product which was unsuitable and failed to provide the advantages promised. It also said that by virtue of section 75, Santander is jointly and severally liable to Mr L for any misrepresentations and breaches of contract made by the holiday company.

Santander then confirmed that Mr L's claim was correctly declined. Our investigator didn't recommend that Mr L's complaint should be upheld as she didn't think that Santander had acted unfairly. She wasn't persuaded that there were any actionable misrepresentations at the time of sale. She said that there wasn't the evidence to demonstrate that the holiday company failed to fulfil one or more of the terms, or that there had been any financial loss even if it had, and she wasn't persuaded that Santander had to take any steps to put things right.

Mr L's representative, on his behalf, says that Mr L disagrees with our investigator's recommendation and it requested that an ombudsman look at his complaint. It attached

detailed submissions which set out the reasons that it wasn't fair or reasonable for Santander to reject the complaint of an unfair debtor-creditor relationship and contain detailed information about two points based holiday club memberships. The submissions also say that Mr L and his wife were encouraged to buy additional membership points by the mis-statements that they would achieve or acquire: enhanced benefits to better accommodation at the holiday company's resorts; priority or better rights for booking accommodation than their existing points holding; wider availability of accommodation and ability to use an exchange system; and a discounted price which was only available that day; and that each of those statements proved false and was made without reasonable grounds for belief in its accuracy.

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

- Mr L'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 L's claim under section 75 is that the membership was mis-sold to Mr L and his wife by the holiday company and, but for the misrepresentations made to them, they wouldn't have purchased and that there have been breaches of contract by the holiday company;
- 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 Santander's response to Mr L's claim was fair and reasonable in the circumstances;
- Mr L's representative's April 2023 letter to Santander says that Mr L and his wife have found that the promises of flexibility haven't come to fruition, as they have found that holidays are always fully booked; the maintenance fees have increased dramatically in the past few years, and due to their retirement and reduced income, they are no longer financially viable; and Mr L's wife suffers from mobility issues which now means it's difficult to travel and use the membership;
- I've been provided with a copy of the membership purchase agreement, the agreement conditions, a right of withdrawal form and a summary schedule and customer compliance statement, all of which were signed by Mr L and his wife in October 2017;
- the agreement says that Mr L and his wife will have the exclusive rights of occupancy of an inland apartment for one floating week each year until December 2027 and the conditions refer to an exchange agreement allowing for a reciprocal exchange program – there's no reference in the documents that I've seen to Mr L and his wife buying a points based membership or to buying additional membership points;
- neither Mr L nor his representative has described in detail the promises of flexibility that were made to Mr L and his wife by the holiday company before they bought their membership or evidence to support Mr L's representative's claim that the promises haven't come to fruition;
- the agreement said that the initial management charge was £340 per week owned and the summary schedule and customer compliance statement says: "*Maintenance fees can only increase in line with [a specified] official Retail Price Index*" – the April

2023 letter says that the maintenance fees have increased dramatically in the past few years but I've seen no evidence to show that the maintenance charge has increased by more than the increase in the specified index;

- I sympathise with Mr L's wife for her mobility issues but it being difficult for her to travel and use the membership isn't a breach of contract or misrepresentation by the holiday company for which Santander would be liable under section 75;
- Mr L and his wife bought the membership in October 2017 but I've seen no evidence to show that they complained to the holiday company or Santander about the alleged misrepresentations and breaches of contract until Mr L's representative's letter to Santander in April 2023, about five and a half years later;
- I'm not persuaded that there's enough evidence to show that the membership was misrepresented to Mr L and his wife by the holiday company or that they were induced into entering into the membership purchase agreement by any such misrepresentations or that the membership was mis-sold to them;
- nor am I persuaded that there's enough evidence to show that there's been any breach of the membership purchase agreement for which Santander 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 Mr L's credit card statement shows that the recipient of the payment of £1,000 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 Santander 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;
- Mr L's representative's submissions in response to our investigator's recommendation set out the reasons that it wasn't fair or reasonable for Santander to reject the complaint of an unfair debtor-creditor relationship – but there was no reference in the representative's letter or Mr L's complaint form to an unfair debtor-creditor relationship or to a claim under section 140A of the Consumer Credit Act – nor was there any reference to an unfair debtor-creditor relationship or to a claim under section 140A in Santander's responses to the section 75 claim that had been made to it;
- I don't consider that a claim about Mr L's relationship with Santander being unfair under section 140A has been made to Santander so I can't consider a complaint about its response to such a claim in this decision;
- I sympathise with Mr L for the issues that he and his wife have had with their holiday club membership and the difficulty that they now have in using it, but I consider that Santander's responses to Mr L's section 75 claim were fair and reasonable in the circumstances; and
- I find that it wouldn't be fair or reasonable for me to require Santander to refund to Mr L any of the money that he paid for the membership, 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 L's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 16 April 2024.

Jarrold Hastings  
**Ombudsman**