

The complaint

Mr and Mrs G complain that a holiday club membership was misrepresented to them and that the loan which financed the purchase was mis-sold and created an unfair relationship. Because Arrow Global Limited took over responsibility for the loan which financed the purchase, Mr and Mrs G say that it is responsible for the actions of both the seller and the original lender.

Mr and Mrs G have had professional representation in bringing this complaint, so any reference to their submissions includes those made on their behalf.

What happened

In May 2005 Mr and Mrs G bought a trial membership of Club La Costa Vacation Club Limited ("the Club"). They did not use it, but in August 2005 they converted it into full membership. They did so by buying from Consolidated Resorts Limited, a company registered in the British Virgin Islands, membership of the Club and 2,501 vacation points. Those points could be used to buy holiday accommodation and other experiences.

The purchase price was £23,267, of which £18,272 was provided by a joint loan from First National Consumer Finance Limited, part of GE Money. The trade-in value of Mr and Mrs G's trial membership made up the balance.

In June 2016 the loan was transferred to Arrow Global. Its records indicate that the loan was repaid in August 2018.

In May 2023 Mr and Mrs G complained to GE Money. It said that responsibility for the loan had been transferred, and it passed the complaint letter to Arrow Global.

Mr and Mrs G's letter set out the background and alleged, in summary:

- The Club and the benefits of membership had been misrepresented to them.
- The loan agreement had been mis-sold – and in particular no proper assessment of affordability had been made.
- Parts of the sale agreement were unfair within the meaning of the Unfair Terms in Consumer Contracts Regulations 1999.
- The holiday accommodation which they had used had been of a poor standard and they had had issues with availability. It was not "exclusive", as had been promised.
- Commission paid to the credit intermediary had not been disclosed.

Arrow Global did not accept Mr and Mrs G's complaint, primarily because of the time that had passed since the sale and since the loan agreement had come to an end. Mr and Mrs G referred the matter to this service, where one of our investigators considered what had happened. She did not recommend that the complaint be upheld. In summary, the investigator said:

- This service has no power to consider complaints about consumer credit activities before 6 April 2007. We could not therefore look at the lending complaint.
- Any misrepresentation claim which Mr and Mrs G might have is likely to be outside the relevant time limits in the Limitation Act 1980.
- There was insufficient evidence for her to conclude that the loan agreement created an unfair relationship within the meaning of section 140A of the Consumer Credit Act 1974.

Mr and Mrs G did not accept the investigator's recommendation and asked that an ombudsman review the case.

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

The complaint about suitability and the credit assessment

Mr and Mrs G say that no proper assessment of their ability to pay the loan was carried out before it was agreed.

At the time the loan was taken out, in August 2005, the Financial Ombudsman Service had no general power to consider complaints about consumer credit providers. It could only do so where consumer credit was provided by a financial service provider which came under its jurisdiction for other reasons and where the provision of credit was ancillary to an activity which was covered – for example, where a bank provided a credit card.

From 6 April 2007, the Service could look at complaints about businesses which held a consumer credit licence from the Office of Fair Trading; consumer credit is now an activity which is regulated by the Financial Conduct Authority. But in August 2005 First National Consumer Finance Limited was not covered by the Financial Ombudsman Service, and so I have no power to consider a complaint what it did or did not do then.

That means that I cannot consider Mr and Mrs G's complaint that the loan was not affordable or suitable for them.

Sections 56 and 75 of the Consumer Credit Act

Under section 56 of the Consumer Credit Act statements made by a broker in connection with a consumer loan are to be taken as made as agent for the lender.

In addition, one effect of section 75(1) of the Act is that a customer who has a claim for breach of contract or misrepresentation against a supplier can, subject to certain conditions, bring that claim against a lender. Those conditions include:

- *that the lending financed the contract giving rise to the claim; and*
- *that the lending was provided under pre-existing arrangements or in contemplation of future arrangements between the lender and the supplier.*

It is clear in this case that the loan financed the purchase of the club membership. The documentation shows however that the seller was Consolidated Resorts Limited and that the credit intermediary was Club La Costa. Any pre-existing arrangements under which the loan was provided were therefore between Club La Costa and First National Consumer Finance Limited, not between the lender and the supplier.

Section 75(1) can apply however where the pre-existing arrangements are between the lender and an "associate" of the supplier, as defined in section 184 of the Consumer Credit Act. A company is an associate of another company if, broadly speaking, they are both controlled by the same people or by people who are associates of one another. Neither party

has provided any information about the ownership or control of Club La Costa and Consolidated Resorts, but I have considered what the position would be if they are shown to be associates. It remains open to both parties to show either that they are or they are not.

Misrepresentation

A misrepresentation is, in very broad terms, a statement of law or of fact, made by one party to a contract to the other, which is untrue and which induces the other party into the contract. There is little detail in this case about what was said to Mr and Mrs G at the time of the sale, beyond what I have summarised above.

Mr and Mrs G's complaint about Arrow Global with reference to section 75 of the Consumer Credit Act is that it did not uphold their claim. Arrow Global made that decision quite recently, in or around July 2023. The event complained about therefore occurred after this service acquired its powers to consider complaints about consumer credit, and the complaint was referred to us within our own time limits – usually six years [from the event giving rise to the complaint].

However, under the Limitation Act an action (that is, court action) based on misrepresentation cannot generally be brought after six years from the date on which the cause of action accrued. Any statements which might have induced Mr and Mrs G into the contract for the purchase of Club membership and points were made on or before 26 August 2005. They did not however raise any complaint with Arrow Global until around May 2023, nearly 18 years later. I think it very likely therefore that a court would conclude that any claim against the seller was made outside the time limit in the Limitation Act.

Where a claim is made against a lender under section 75(1) of the Consumer Credit Act, the lender can generally rely on any defence which would be available to the supplier – including Limitation Act defences. In the circumstances, I do not believe it would be fair to uphold this part of Mr and Mrs G's complaint.

To the extent that Mr and Mrs G say that Arrow Global is responsible under section 56 of the Consumer Credit Act for statements made by the seller, those statements pre-date the Financial Ombudsman Service's jurisdiction to consider complaints about consumer credit activities, which I discussed above.

Section 140A claims

Under section 140A and section 140B of the Consumer Credit Act a court has the power to consider whether a credit agreement creates an unfair relationship and, if it does, to make appropriate orders in respect of it. Those orders can include imposing different terms on the parties, refunding payments and re-opening an agreement which has come to an end. In considering whether a credit agreement creates an unfair relationship, a court can have regard to any related agreement. A related agreement includes a "linked transaction", as defined in section 19, which in turn includes an agreement financed under pre-existing arrangements between the lender and the supplier.

As I have indicated in respect of the complaint about Arrow Global's handling of the section 75 claim, whether there were such pre-existing arrangements depends on Consolidated Resorts and Club La Costa being associates of each other. If they were not, however, the sale agreement and the loan agreement are not connected and sections 140A and 140B will not apply.

The relevant time limit for consideration of a claim under sections 140A and 140B is six years from the end of the loan agreement. Mr and Mrs G's representative has said that the loan was repaid in 2015, but also that it was repaid in 2019. I am satisfied however that it

was repaid in September 2018, so this part of the complaint was made within the relevant time limits.

An ombudsman does not have the power to make an order under section 140B. I must however take relevant law into account in deciding what I consider to be fair and reasonable. And I have the power to make a wide range of awards – including, for example, requiring a borrower to refund interest or charges, and to write off or reduce the balance of a loan. I am not persuaded however that I should do so here.

The allegations which Mr and Mrs G have made are, in my view, vague and are not supported by evidence. I will comment briefly on the main issues they have raised in support of this part of their complaint:

- Mr and Mrs G say that no proper credit assessment was made. They were however able to afford the loan and repay it early. They never suggested that they were having difficulty doing so, even when they paid off the balance.*
- They say that accommodation was of a poor standard and availability was limited. They have provided no evidence in support of either statement, or that they ever raised either issue with the Club.*
- They say the sale was pressured and that they had no time to read the paperwork. However, they had 14 days in which to cancel both the sale agreement and the loan agreement. They did not do so.*
- They say that commission was not disclosed. There was no obligation on the lender to do so, however, and I note that Mr and Mrs G's representative does not appear to have asked whether any commission was paid before bringing this complaint.*
- They say some clauses in the agreement were unfair. If that's true, those clauses will not be enforceable against them. But they have not suggested that any unfair terms have been invoked or explained how they have suffered any detriment as a result.*

As I have indicated, I am satisfied that this part of the complaint was brought within the relevant time limits – both our own and those which would apply under the Limitation Act. Be that as it may, it is notable that no complaint appears to have been made until 18 years after the sale and loan were agreed. In my view, that indicates that the issues which Mr and Mrs G have now raised, if genuine, were not particularly significant to them at the time – and certainly not so significant that I should uphold their complaint.

Conclusions

In summary therefore:

- The Financial Ombudsman Service has no power to consider the complaint to the extent it is about the actions of Arrow Global's predecessor at the time of sale.*
- I am not persuaded at this stage that the agreement for the sale of membership of the Club and the loan agreement were linked in the way needed for sections 75(1), 140A and 140B to apply.*
- If they were linked, any claim against the seller for misrepresentation is likely to be out of time under the Limitation Act, so it would not be fair to uphold a similar claim against Arrow Finance.*
- Again, if the agreements were linked, there is insufficient evidence at this stage to enable me to conclude that the loan agreement created an unfair relationship.*

Both Arrow Finance and Mr and Mrs G acknowledged receipt of my provisional decision but said they had nothing further 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 provided any more evidence or arguments in reply to my provisional decision, I do not believe there is any good reason to reach a different conclusion about how this complaint should be resolved. In saying that, I stress that I have considered all the evidence and arguments from the outset before reaching this final decision.

My final decision

For these reasons, my final decision is that I do not uphold Mr and Mrs G's complaint and I do not require Arrow Global Limited to do anything more to resolve it.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G and Mrs G to accept or reject my decision before 6 May 2024.

Mike Ingram

Ombudsman