

The complaint

Miss G complains that she was mis-sold a timeshare product and the loan used to pay for it. The loan was provided by First Holiday Finance Ltd, which I'll refer to as "FHF". Miss G has been represented in bringing this complaint by a claims management business, so any reference to her arguments and submissions include those made on her behalf.

What happened

Miss G has explained that she and a family member had been offered a free holiday through a security firm. While on holiday, they were told they had to attend a presentation. They did that and, in January 2019, they bought a fractional timeshare product – that is, an interest in a timeshare property, where timeshare properties are sold after a set number of years and the net proceeds shared amongst those who have bought timeshare weeks in those properties.

Miss G and the same family member were on holiday in February the following year. Again, they attended a presentation. Following that presentation, they changed their fractional timeshare to a points-based holiday club membership. They bought from Club La Costa (UK) Sucursal en España (a UK company with registration in Spain, and which I'll call "CLC") a 15-year membership of Club La Costa Vacation Club, 1,710 holiday points (of which 200 were described as bonus points), and membership of RCI, a timeshare and holiday exchange business. Miss G and her family member could trade the holiday points for holiday accommodation and other benefits over the membership period.

To pay for the membership and points, Miss G took out a loan for £6,902 from FHF. Credit was given for the trade-in value of the fractional timeshare interest (£14,130), and an advance payment of £500 was taken. The loan was brokered by CLC.

In March 2023 Miss G complained to FHF. She said that she had been misled about the sale of the holiday club membership and the holiday points she had bought. Specifically, accommodation was not available to the extent CLC had said it would be; RCI discounts weren't available; and she had been told she could sell points later.

Miss G also said: the sales process had been pressured; some terms of the membership contract were unfair; and necessary information had not been provided. Miss G said that the effect of the Consumer Credit Act 1974 (and in particular sections 56 and 75) was that FHF was responsible for the actions of CLC and that the overall circumstances were such that the loan agreement created an unfair relationship between her and FHF. The loan should therefore be written off and all payments made under it and the timeshare agreement should be returned.

FHF did not accept Miss G's claims, and she referred the matter to this service. One of our investigators considered what had happened, but did not recommend that the complaint be upheld. Miss 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:

As I have set out in the background above, Miss G bought two timeshare products, in 2019 and 2020. The first – the fractional timeshare – was not financed by FHF and so does not form part of this complaint. This complaint concerns the points-based product bought in February 2020.

Sections 56 and 75 of the Consumer Credit Act

Under section 56 of the Consumer Credit Act 1974 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.*

I am satisfied that the necessary conditions were met in this case, since CLC was both the seller and the broker, and so will discuss what has been said about misrepresentations.

Misrepresentation and breach of contract

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.

Miss G says that the membership and points were sold to her as an investment. She has not however expanded on that. Her allegation is vague and not supported by evidence.

In addition, the Acquisition Agreement she signed included, at paragraph 5 on page 1:

“We understand that the purchase of our membership in vacation club is a personal right for the primary purpose of holidays and is neither specifically for direct purposes of a trade in nor as a real estate interest or an investment in real estate, and that CLC makes no representation as to the future price or value of the Vacation Club Holiday product...”

Miss G also signed a Member’s Declaration, which included a near-identical statement.

In the circumstances, I think it most unlikely that the club membership was sold as an investment, or that Miss G thought that was what she was buying. I note as well that there is no evidence of any attempt on the part of Miss G to sell the membership and points.

Miss G says she was told she could book holidays at any time of the year. But that was true – albeit subject to availability of accommodation. In any event, FHF has provided information showing that Miss G has in fact booked nine holidays using her CLC membership. All were cancelled before they were taken. If it is part of Miss G’s case that she was unable to book accommodation, I would expect her – or those representing her – to provide rather more information about the bookings which were made and the subsequent cancellations. But it is quite clearly not the case that Miss G was unable to make bookings.

Miss G says she was told she would receive RCI discounts. But she has provided no information about any bookings she made, or tried to make, through RCI, or of the prices offered. There is therefore no information to show whether she was or was not offered discounts.

In respect of Miss G's claims that the product was misrepresented to her, I also note that the Member's Declaration included, at paragraph 10:

"We understand that this Member's Declaration, together with the Agreement, is the entire written contract between the parties, anything additional shall only be valid if signed and stamped on behalf of the Company."

In my view, the inclusion of an "entire agreement" provision was an attempt to ensure that anything on which Miss G sought to rely was included in the contract itself. Such provisions are not uncommon, even in consumer contracts, as they can help to provide clarity about the parties' rights and obligations. I am not persuaded in this case that Miss G was misled, but, if I were to take a different view on that, I would need to consider the effect of that declaration.

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 connected agreement, which in this case could include the sale contract.

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.

Miss G says that the timeshare sale was pressured. She submitted a written statement after the investigator issued this service's preliminary view on the complaint, setting out what happened. I note however that the statement is unsigned and undated. Perhaps more significantly, it does not provide any dates when the events described are said to have happened. Given that Miss G bought two timeshare products about a year apart, that is a significant omission. In my view, the written statement is of limited assistance in deciding what happened at the point of sale.

Be that as it may, it was very clear from the sales documents that Miss G could cancel both the sale and the loan agreement for 14 days after she signed them. Paragraph 12 of the Member's Declaration said:

"We have received a copy of our Agreement together with the notices and Information Statement (which we have had adequate time to review before signing) required under the EU Timeshare Directive 2008/122/EC."

The Directive referred to was incorporated into UK law by The Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010 ("the Timeshare Regulations"), which requires customers to be given 14 days in which to cancel a timeshare contract. Miss G was told that she could cancel and was provided with a form by which she could do so. If, as she says, she was genuinely pressured into buying something she did not understand, I might have expected her to explain when she brought this complaint why she didn't exercise her right to cancel.

Instead, Miss G said that she had not received the information required under the Timeshare Regulations. But she quite clearly did receive information which CLC was satisfied did meet its obligations in that regard. If Miss G's case is that the notices and information did not in fact meet the requirements of the Timeshare Directive, I would expect her – or her

representatives – to explain why that was. But if – as she appears to be saying – nothing was provided, it is not clear to me why she signed and initialled paragraph 12.

Miss G's representative has also said that the timeshare contract allows CLC to rescind membership if any sum due remains unpaid for 14 days, and that this is likely to be unfair (and therefore not enforceable against Miss G) under (now) the Consumer Rights Act 2015. That is not however my understanding of the position. By clause D of the Acquisition Agreement the seller can rescind the Agreement if any sum due under it remains unpaid for 14 days. I note however that the only sum payable under the Acquisition Agreement was the sale price for the Club membership and holiday points. Miss G's case appears to be, therefore, that, had she not paid the price of membership, it would have been unfair for her membership and points to have been withdrawn. That would be a surprising outcome.

The sum due under the Acquisition Agreement (that is, the purchase price) was paid, of course. I understand that Miss G has not paid more recent management fees (which are due under the Club's Articles of Association), but that her membership has not been rescinded as a result.

It is not for me to decide whether Miss G has a claim against CLC, or whether she might therefore have a "like claim" under section 75 of the Consumer Credit Act. Nor can I make orders under sections 140A and 140B of the same Act.

Rather, I must decide what I consider to be a fair and reasonable resolution to Miss G's complaint. In the circumstances of this case, however, I do not believe that it would be fair to require FHF to do any more to resolve things.

I indicated that I would consider any further evidence and arguments which the parties wished to provide before I issued a final decision, and I gave them until 17 April 2024 to make further submissions. Neither Miss G nor FHF has done so.

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 I have received no further evidence or arguments in response to my provisional decision, I do not believe there is any good reason for me to reach a different conclusion in my final decision.

My final decision

For these reasons, my final decision is that I do not uphold Miss G's complaint. Under the rules of the Financial Ombudsman Service, I'm required to ask Miss G to accept or reject my decision before 28 May 2024.

Mike Ingram
Ombudsman