

## **The complaint**

Mrs T complains about the sale of a timeshare that was funded through an agreement with Honeycomb Finance Ltd. The account was acquired by Oplo PL Ltd in August 2022. For ease I will refer to Oplo as the provider of credit in this agreement.

Mrs T has brought her complaint through a representative, so references to her submissions and arguments include those made on her behalf.

## **What happened**

I issued a provisional decision on this complaint in March of this year. An extract from that provisional decision is set out below.

*In October 2018 Mrs T entered into an agreement with Leisure Dimensions to buy points in a timeshare holiday club. She financed the purchase through a fixed sum loan that Oplo subsequently acquired.*

*In February 2020 Mrs T's representative complained to Oplo. They said the purchase agreement, and the related credit agreement, had been misrepresented to Mrs T as she had been told there were no maintenance fees for the first two years, but fees had subsequently been charged. They said she had also been given misleading information about the contract as it was noted on the agreement to be a "reload" and not a "termination". They said Mrs T also had a valid claim under section 140A of the Consumer Credit Act 1974 (CCA) as there had been an unfair relationship.*

*Oplo didn't uphold Mrs T's claim and she, therefore, escalated it to this Service.*

*Our investigator considered what had happened but wasn't persuaded there was sufficient evidence to support Mrs T's claims.*

*Mrs T's representatives didn't agree. They provided a witness statement in support of Mrs T's claim and they asked for a decision by an ombudsman.*

## **What I've provisionally 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.*

*I'm issuing a provisional decision here as I can see we didn't respond to all of the issues. I'm not currently expecting to uphold the complaint.*

*I'm required by DISP 3.6.4R of the Financial Conduct Authority's (FCA's) Handbook to take into account the relevant, laws and regulations; regulators rules, guidance, and standards; codes of practice and, when appropriate, what I consider to have been good industry practice at the relevant time.*

*The Financial Ombudsman Service is designed to be a quick and informal alternative to the*

*courts under FSMA. Given that, my role as an ombudsman is not to address every single point that has been made. Instead, it is to decide what is fair and reasonable given the circumstances of this complaint. And for that reason, I am only going to refer to what I think are the most salient points. But I have read all of the submissions from both sides in full and I keep in mind all of the points that have been made when I set out my decision.*

*As a general observation I would explain that there has been very limited evidence provided in support of Mrs T's various claims. I've seen a copy of a purchase agreement and her witness statement but haven't been supplied with any detailed terms, correspondence, or documentary evidence to support Mrs T's allegations. I don't think Mrs T's testimony alone is reason to support her claims.*

### ***The claim under the CCA***

*When something goes wrong and the payment was made, in full or in part, with a fixed sum loan, it might be possible to make a section 75 claim. This section of the CCA says that in certain circumstances, the borrower under a credit agreement has a right to make the same claim against the credit provider as against the supplier if there's either a breach of contract or misrepresentation by the supplier.*

*There's been no suggestion that all the necessary criteria for a claim to be made under section 75 haven't been met and I'm persuaded they have been.*

*Section 56 of the CCA is relevant in the context of section 140A of the CCA, as the pre-contractual acts or omissions of the credit broker or supplier will be deemed to be the responsibility of the lender, and this may be taken into account by a court in deciding whether an unfair relationship exists between Mrs T and the lender.*

*It's not for me to decide the outcome of a legal claim Mrs T may have under sections 75 or 140A but I'm required to take the provisions into account when deciding whether Oplo were reasonable to reject her claims.*

### ***The claim under section 75 of the CCA***

*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 materially influenced the other party to enter into the contract.*

*Mrs T says the agreement was misrepresented to her as she was told she would have no liability for maintenance fees for the first two years. But the Declaration of Treating Customers Fairly form, that Oplo have provided, and that Mrs T signed in October 2018, explains that:*

*"I/We understand that I/we will pay an annual points fee towards the running of the Club and the maintenance of the resorts in the Club for the Pure and traded points" and that Mrs T understands there is an annual membership fee.*

*On that basis and in the absence of any information to the contrary other than Mrs T's testimony, I don't think it is likely a court would find the agreement had been misrepresented to Mrs T.*

*The five year surrender letter makes no mention of any requirement to waive rights to raise a claim against the business. So, I don't think I have sufficient evidence that the surrender was misrepresented to Mrs T and, even if there was such a clause, I can't see Mrs T has been disadvantaged by it as she raised a claim before it could be operated.*

*I don't, therefore, think it's likely a court would find there was sufficient evidence to uphold a claim under section 75, and I don't think Oplo were unreasonable to do so either.*

### **The claim under section 140A of the CCA**

*Section 140A CCA looks at the fairness of the relationship between a debtor and creditor arising out of the credit agreement (taken together with any related agreement).*

*I do not consider it likely that a court would conclude that the lender's acts and/or omissions, or those of the supplier or credit broker as agents of the lender, generated an unfair debtor – creditor relationship.*

*Mrs T says that misleading statements were provided but hasn't clarified what those misleading statements were.*

*Even if there were unfair contractual terms the case law on Section 140A makes it clear that the practical application of the relevant terms by the Supplier is highly relevant to an assessment of unfairness under that provision. I haven't seen enough evidence to persuade me that the terms were applied unfairly against Mrs T by the Supplier. And even if they had been, in keeping with Section 140B of the CCA (which makes it clear that any remedy should reflect and be proportionate to the nature and degree of the unfairness), it doesn't automatically follow that the entire purchase should be undone.*

*Ultimately, I don't think Oplo were unreasonable to reject the claims Mrs T made to them under section 140A. I'm not expecting to ask them to take any action.*

### **My provisional decision**

*I'm not expecting to uphold this complaint.*

### **Responses to my provisional decision**

Neither party provided any further comments for me to consider.

### **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've not been provided with any additional information my provisional decision remains unaltered and becomes my final decision on this complaint.

### **My final decision**

For the reasons I've given above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs T to accept or reject my decision before 24 May 2024.

Phillip McMahon  
**Ombudsman**