

## The complaint

Mr O's complaint is, in essence, that Tandem Personal Loans Ltd trading as Oplo (the 'Lender') acted unfairly and unreasonably by deciding against paying a claim under Section 75 of the Consumer Credit Act 1974 (the "CCA").

## What happened

On 6 June 2019 (the 'Time of Sale'), Mr O (together with his wife) agreed to purchase a trial timeshare product (the 'Timeshare') from a timeshare provider (the 'Supplier') for an agreed price of £4,395 (the 'Purchase Agreement'). The purchase was funded under a fixed sum loan agreement (the 'Credit Agreement') with the Lender over 36 months in Mr O's sole name. All amounts under the Credit Agreement were repaid by June 2022.

In or around February 2024, Mr O submitted a complaint to the Lender which highlighted various concerns about the Timeshare purchased. Mr O's complaint included allegations that the Supplier had misrepresented the Timeshare to him at the Time of Sale. And further, that the Supplier had breach the terms of the Purchase Agreement. In particular, Mr O said:

- the *"experience has not aligned with the promises made when we initially joined"* and has *"led to the decision to cancel and request a refund"*;
- he had *"Difficulty booking holidays (which is contrary to what was promised) we have faced extreme difficulties in booking properties. They are always fully booked so unable to make reservations..."*; and
- he was *"Forced to book outside of Term time (as an educator, I cannot do this because it will affect my employment)"*.

Mr O wanted the Lender to refund all amount paid under the provisions of the CCA.

In response, the Lender rejected Mr O's complaint on every ground. So, he referred matters to the Financial Ombudsman Service for consideration. Having considered all the evidence and information provided, one of this service's investigators didn't think Mr O's complaint should be upheld.

Mr O didn't agree with our investigator's findings, reiterating that he hadn't received anything under the Purchase Agreement. He asked that his complaint be consider further by an ombudsman, which is why it was passed to me.

## 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.

## Relevant consideration

When considering what's fair and reasonable, DISP<sup>1</sup> 3.6.4R of the FCA Handbook means I'm required to take into account; relevant law and regulations, relevant regulatory rules,

---

<sup>1</sup> Dispute Resolution: The Complaints sourcebook (DISP)

guidance and standards and codes of practice; and, where appropriate, what I consider was good industry practice at the relevant time.

Where evidence is incomplete, inconclusive, incongruent or contradictory, my decision is made on the balance of probabilities – which, in other words, means I've based it on what I think is more likely than not to have happened given the evidence that's available from the time and the wider circumstances. In doing so, my role isn't necessarily to address in my decision every single point that's been made. And for that reason, I'm only going to refer to what I believe are the most salient points having considered everything that's been said and provided.

### The Financial Ombudsman Service's Substantive Jurisdiction

The subject matter of Mr O's complaint must fall within the definition of a "complaint"; and this service only has the jurisdiction to consider "complaints" (as defined in the Glossary of the FCA's Handbook of rules and guidance) about the provision of, or failure to provide, a financial service, claims management service or redress determination. Expressions of dissatisfaction about other matters fall outside this service's jurisdiction.

What's more, this service can only consider complaints under its Compulsory Jurisdiction that concern an "activity" as set out in Rule 2.3.1 in DISP – which, insofar as it's relevant here, means that this complaint must relate to an act or omission of a respondent firm (or a person for whom the respondent firm is responsible<sup>2</sup>) in lending money<sup>3</sup> or carrying out a regulated activity or any ancillary activity carried out by the respondent firm in connection with those activities.

Mr O's complaint to the Lender raises allegations of misrepresentation and breach of contract by the Supplier at the Time of Sale. Section 75 of the CCA ("S75") creates a financial liability that the creditor (the Lender) is bound to pay. Liability under S75 isn't based upon anything the lender does wrong. Rather upon misrepresentations and / or breaches of contract by the Supplier. S75 imposes on the lender a "like claim" to that which the borrower enjoys against the supplier. If the lender is notified of a S75 claim which is found to be valid, it should pay its liability. And if it fails or refuses to do so, that can give rise to a complaint to this service.

Mr O paid for the Timeshare under the Credit Agreement with the Lender. So, it isn't in dispute that S75 applies here. This means Mr O is afforded the protection offered to borrowers like him under those provisions.

When a complaint is referred to this service on the back of an unsuccessful S75 claim, the act or omission that engages this service's jurisdiction is the creditor's refusal to accept or pay the debtor's claim. This is distinct from anything that occurred before the claim was made such as the supplier's alleged misrepresentation(s) and/or breach(es) of contract.

Mr O's complaint is therefore about the Lender not upholding his complaint about the Supplier's alleged misrepresentations, essentially declining a claim under S75. So, this is an expression of dissatisfaction about the provision of a financial service. And as the Credit Agreement was a "regulated credit agreement" for the purposes of Article 60(B)(1) in Part 2 of the Financial Services and Market Act 2000 (Regulated Activities) Order 2001 (the 'Regulated Activities Order'), those concerns are also clearly about a regulated activity. So, this service does have the jurisdiction to consider Mr O's complaint about the Lender.

I also notice that the Timeshare was purchased in joint names with Mr O's wife. However, as the Credit Agreement is in Mr O's sole name, only he is an eligible claimant and, as a consequence, the only eligible complainant here.

### What did Mr O purchase.

---

<sup>2</sup> See DISP 2.3.3 G

<sup>3</sup> This excludes restricted credit unless the lending amounted to a credit-related regulated activity.

I've seen a document from the Time of Sale headed "Trial Membership Agreement". It states;

*"The Applicant(s) hereby apply to become a Trial Member of the Club by purchasing the rights to reserve up to the number of holiday weeks specified below within a period of 36 months from the date of signing this Agreement, subject to (a) the terms and conditions listed on the reverse of this Agreement, (b) the attached Information Statement and Trial Membership Regulations in the Schedule, (c) the Rules of Occupation of the Club and (d) any ancillary documents as amended from time to time (copies of which have been provided to the Applicant(s) [...]"*

The Agreement specifies five weeks to be taken by June 2022 with a termination date of 6 June 2022. Mr O has signed the Trial Membership Agreement.

Note 2 on Page 2 of the Agreement confirms that the Timeshare *"is to provide a flexible system to enable Members to try out the Club and take holidays in a range of holiday locations with a choice of accommodation"*.

The documentation from the Time of Sale also includes a *"Members Declaration"* signed by Mr O.

Note 3 of the Members Declaration includes, *"Unit sizes vary from resort to resort and are subject to availability"*.

Note 4 says, *"We understand that we will only be entitled to occupation of weeks in Apartments and at Resorts available to our Trial Membership, accommodation varies from resort to resort, the allocation is subject to availability and demand"*.

The Information Statement, which Mr O acknowledged he'd received (by signing the Trial Membership Agreement), starts by confirming, *"Should this document contain anything which conflicts with any information you were given prior to purchasing your Membership then the information contained herein will prevail"*.

Part 1 of the *"Standard Information Form"* says *"...you will be entitled to occupancy rights (subject to availability)"*.

Part 3, Note 1 states, *"...all reservation requests in Trial Membership are subject to availability and seasonal demands. It should be noted that [the Supplier] tries to cater for Members changing travel patterns and therefore an element of [the accommodation available] will change over time. No assurances can be given that a specific resort will remain within [the Supplier's portfolio] for the lifetime of a membership or for the entire duration of the [Suppliers membership scheme]"*.

Part 3, Note 8 says, *"All reservations are dealt with on a first come first served basis"*.

The Standard Information Form includes a section headed *"Regulations"* serving as the Terms and conditions of use of Trial Membership. It says:

- *"reservations for holidays can be made up to 12 months in advance..."*;
- *"All space is subject to availability. Demand in school holidays is considerable and therefore reservation requests should be made as far in advance as possible"*;

So, in summary, it appears Mr O purchased a trial or sample membership timeshare product enabling him to make bookings from the Supplier's portfolio of accommodation and resorts limited to 5 weeks in a three-year period ending June 2022 (subject to availability).

#### The claim for misrepresentation under S75

For me to conclude there was a misrepresentation by the Supplier in the ways that have been alleged, generally speaking, I would need to be satisfied, based on the available evidence, that the Supplier made false statements of fact when selling the Timeshare. In other words, that they told Mr O something that wasn't true in relation to one or more of the

points raised. I would also need to be satisfied that the misrepresentations were material in inducing Mr O to enter the contract. This means I would need to be persuaded that he reasonably relied on those alleged false statements when deciding to buy the Timeshare.

From the information available, I can't be certain about what Mr O was specifically told (or not told) about the benefits of the Timeshare he purchased. Mr O hasn't provided any details of what the Supplier is alleged to have said to him that led him to believe he would be guaranteed to secure the holidays he wanted, when he wanted. And importantly, that he was guaranteed to secure holiday bookings outside of school term times.

With that being the case, I've considered what was included within the documentation provided to Mr O at the Time of Sale. Having done that, I haven't found anything to suggest that the Supplier provided any guarantees of availability in relation to specific resorts, locations and accommodation throughout the agreed term of his Timeshare. Rather, I think it was made repeatedly clear that all booking were subject to availability and allocated on a first come, first served basis. So, whilst I can understand why Mr O may not always have been able to secure bookings at his preferred destination(s) and at his preferred times, I can't reasonably conclude that would constitute an actionable misrepresentation that the Lender could ultimately be held liable for under S75.

#### The claim for the Supplier's breach of contract under S75

I've already summarised how Section 75 of the CCA works and why it gives Mr O a right of recourse against the Lender. So, it isn't necessary to repeat that here other than to say that, if I find that the Supplier is liable for having breached the contract entered into, the Lender is also liable.

Mr O says they could not holiday where and when they wanted to – which, on my reading of the complaint, suggests that he considers that the Supplier was not living up to its end of the bargain, and had breached the Purchase Agreement. Like any holiday accommodation, availability was not unlimited – given the higher demand at peak times, like school holidays, for instance. As I've already explained above, some of the sales paperwork signed by Mr O makes clear the availability of holidays was / is subject to demand. So, whilst I accept that they may not have been able to take certain holidays, I have not seen enough to persuade me that the Supplier had breached the terms of the Purchase Agreement.

#### Extension of the Timeshare trial membership

From the information available, it appears that the Supplier agreed to extend the originally agreed term under the Purchase Agreement. And I think this was likely to be due to the impact of the global pandemic in 2020 and 2021.

Having been approached by the Lender (as part of its investigations into Mr O's complaint) the Supplier confirmed that the first time Mr O used his Timeshare to make a reservation was in July 2023 – more than a year after the original date of expiry. The Supplier has also said, and Mr O has confirmed, that the (revised) final date for him to use his Timeshare was 6 December 2024. So, it seems the Supplier had agreed to extend the original term by a total of 2½ years.

At the time of referring his complaint to this service, it was explained by Mrs O's wife that it wouldn't be possible for them to take their holidays before 6 December 2024. And because of that, Mr O thought the Lender should refund what had been paid for the Timeshare. Furthermore, this service was informed that Mr O's wife had been having health issues following the effects of the Global Pandemic. And she wanted to ensure she was fit and healthy before booking further holidays.

I do acknowledge the personal circumstances of Mr O (and his wife) and how they might impact their ability to commit to holiday bookings. But I can't reasonably say that his reluctance to book holiday's sooner was because of something the Supplier had done. And

consequently, I can't reasonably conclude that the Lender should be held liable because of that.

#### Summary and conclusion

I recognise and appreciate Mr O's strength of feeling here. But having carefully considered everything available, I can't reasonably conclude that there was an actionable misrepresentation or breach of contract such that the Lender could ultimately be held liable for it under S75. I do realise Mr O will be very disappointed but, based upon my findings, I'm not persuaded that the Lender's response to his complaint was unfair or unreasonable. So, I won't be asking them to do anything more here.

#### **My final decision**

For the reasons set out above, I don't uphold Mr O's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O to accept or reject my decision before 30 April 2025.

Dave Morgan  
**Ombudsman**