DRN-5551950

The complaint

Mr P complains that Creation Financial Services Limited ("Creation") failed to uphold his claim under Section 75 Consumer Credit Act 1975 ("s.75") in full. Mrs P has represented her husband in making this claim, but for ease of reference I will refer to him alone since he is the eligible complainant.

What happened

In 2014 Mr P received a cold call inviting him to a meeting to sell his timeshare. Before the meeting, he believed the only services he would be offered were arrangements to sell his timeshare.

In October 2014 Mr P attended the meeting where he met with a different business, Monster Travel ("MT"). He says he was told MT couldn't sell his timeshare, but MT offered him 'credits' that he could buy and then sell later – the credits could also be used to buy discounted holidays through MT. He was told that after 14 months the credits would be sold for significantly more than he paid for them, which would cover the 'value' of the timeshare membership he held. Further, he would be introduced to a lawyer that would terminate his timeshare membership. The credits cost £9,350 and he was also told he had to purchase a book of vouchers at a cost of £500. Mr P paid £500 of this using his Creation credit card, the remainder was paid by a bank transfer from another bank. But Mr P's credit card payment didn't go to MT, instead it went to a Spanish business recorded on his credit card statement as Hollywood Marketing SL ("HM").

The further £9,350 was paid via a bank transfer using Global Currency Exchange Network ("GCEN"). This was paid on 26 November 2014 which he has said was the second contractual payment. He has supplied a document from the sale which states:

"*By signing this document we acknowledged that once the funds have been cleared in the GCEN account they will be converted into Euros and forwarded on to Complete Internet Solutions Ltd. ("CIS").*"

Mr P became aware that the seller ceased trading in April 2019 and in January 2024 submitted a claim to Creation for the refund of £9,850 plus interest. Creation agreed to refund £500 paid using its credit card plus interest, but it refused to refund the other payment of £9,350. It said that the money was paid to GCEN and so the required debtor-creditor-supplier agreement had been broken.

Creation rejected Mr P's complaint and so he brought a complaint to this service. It was considered by one of our investigators who didn't recommend it be upheld. Mr P asked that the complaint be considered by an ombudsman.

I issued a provisional decision as follows:

"I have considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

When evidence is incomplete, inconclusive, incongruent or contradictory, I've made my decision on the balance of probabilities – which, in other words, means I've based it on what I think is most likely to have happened given the available evidence and the wider circumstances.

There is no evidence from MT, CIS, or HM, and the only evidence there is from the time of sale is from Mr P. He has provided all of the documentation he has, along with his memories. So when considering this claim, that is the only evidence there is available. I'm mindful that his memories may not be an accurate representation of the precise sales process as memories are imperfect. So I've had to weigh all of that up when deciding what I think most likely happened. I don't think it's unfair to Creation for me to do this – ultimately I must decide the complaint in front of me based on the evidence available.

When considering this complaint, I think it is important to set out what I find Mr P agreed to and with which business. I'll then consider any legal claims that Creation needed to consider, given the legal relationships between the parties. Finally, I'll consider whether Creation needs to do anything further to resolve this complaint.

The Documentation

• An invoice dated 31 October 2014 headed Hollywood Marketing S.L.U. showing the sale of a voucher book worth £4,850 at a cost after taxes of €615.69. It states that this purchase is non-refundable and non-cancellable. "It has the following note:

"… This purchase does not form a part of any other contract or purchase that you may, or may not, be entering into now (or at any other time) from this, or any other, company. Nor does the payment constitute a "deposit" or an "Advance Payment" against any other product(s), contract(s) or purchase(s)…"

• Credit Card receipt for €615.69 paid to Hollywood Marke(FA≠ABE)

• A document dated 31 October 2014 headed GCEN signed by Mr P and his wife stating: "By signing this document we acknowledged that once the funds have been cleared in the GCEN account they will be converted into Euros and forwarded on to Complete Internet Solutions Ltd." CIS is registered in the Seychelles.

• An eight page Monster Credits Purchase Agreement (With Timeshare Trade-in). This provides 432,889 Monster Credits at a cost of £9,350. This is signed by Mr and Mrs P and for the seller by [Ms X] Compliance Officer CIS. It notes that details of the discounts for accommodation, flights etc. are available at www.Monster.travel. It also says this website is owned and operated by HM, but it is not a party to this contract, but it acts as an agent for CIS.

• A Monster Travel Compliance Checklist dated 31 October 2014

• A Monster Travel Worksheet dated 31 October 2014. This shows the sale of credits for £9,350 and a voucher book for £500 with a total due of £9,850. A balance of £9,350 is due by 28 November 2014.

• A Client Proposal Form showing 432,889 @7 1/2 p. £32,467 less £8,117 Company Future Commission with a net of £24,350. From this £14,500 is deducted for Ownership Allowance leaving net sum of £9,850.

Mr P's Recollections

Mrs P has set these out for us albeit with some brevity. He was cold called and invited to a meeting in the UK to explore selling his existing timeshare with a business called Sell My Timeshare ("SMT"). However, he met with MT and not SMT. The meeting lasted five hours and he and his wife were put under some pressure to sign. He was passed on to another company to assist him with exiting his timeshare but was advised it had no value.

However, he was told that if he purchased the credits he would be able to sell these after 14 months and that would cover both their cost and that of his timeshare. He was not offered either of the two elements alone and was told that the price was £9,850 with £500 payable on the day.

Additional Information

I've also considered a report prepared on HM by the Direct Marketing Commission ("DMC"). It noted that HM ran two websites, SMT and MT. SMT provided an initial valuation of timeshares and invited people to an 'advice' meeting. At that meeting, MT credits were offered and a customer was introduced to a paralegal firm to arrange termination of the timeshare. The report states:

"Hollywood Marketing advertising clearly encourages consumers to believe they can sell their timeshare, yet this, by Hollywood's own admission, is unlikely in a market where there are about 300 sellers for every potential buyer. At high pressure "advice meetings" consumers are clearly led towards purchasing Monster Credits and doing so on the basis that there is a parallel action to 'exit' them from their timeshares.

This parallel action is undertaken by a paralegal firm which appears to rely on a breach of contract to exit those consumers thereby putting them in a state of ongoing uncertainty with the possibility of ongoing demands for maintenance fees from their timeshare resorts. The Commission had major concerns over a model where a timeshare owner trying to sell is switched into a buyer of travel Credits with a notional long term value. These concerns grew when it became clear some who were putting their timeshare into the deal to buy Monster Credits were not ending their ownership with any certainty, but being left facing future costs and legal disputes over their continuing responsibilities as an owner."

The report goes on to describe concerns with the way credits were to be used and recommends that HM's membership of the association was terminated. I think this report fits with Mr P's recollections of what he was sold, so I on balance, I do think these things were sold to him as a 'package', in that he didn't choose to buy them individually, nor am I aware he could or they were offered separately. I find the sales process Mr P described closely followed the process described by the DMC and I find he bought the credits and vouchers on the basis that he would recoup his money.

But I do accept that, even though he might have believed the £500 he paid was a deposit, the contract is clear that he paid £500 on his credit card for the vouchers and the bank transfer was used to pay for the credits.

However, we need to consider the connections between the companies. This service has dealt with similar complaints and has previously considered the relationship of the companies involved in these transactions.

The contract which is under dispute in this case was with CIS. The card payment was however made to a different company, HM (which has since changed its name). The Bank's "pre-existing arrangements" were therefore with that company, not with CIS.

However, under section 187 of the Act, a consumer credit agreement is to be treated as

entered into under such pre-existing arrangements if it is entered into by the creditor and an associate of the supplier. In the Act, "supplier" is defined by reference to the person with which the creditor has arrangements and by reference to the person which is a party to a transaction with the debtor. In any given transaction, however, it seems to me that there can only be one "supplier" and that, for the purposes of section 75, it must be a party to the underlying transaction and the party with which the creditor has arrangements.

Under section 184, however, a company is an "associate" of another company "… if the same person is a controller of both, or a person is a controller of one and persons who are his associates, or he and persons who are his associates, are controllers of the other…"

The ownership of CIS is hidden. I understand that is not unusual in the Seychelles, where corporate and nominee shareholders and directors are common. However, in October 2014 a power of attorney was executed by the company in favour of a Mr R. That document gave him wide powers to control the company and its finances. I think he can properly and fairly be said to have been its "controller" within the meaning of section 184 at the relevant time. A person does not need to be an officer or shareholder of a company in order to be a controller of it.

At the same time, a Mrs R – said to be the wife of Mr R – was the sole shareholder and administrator of HM. I am satisfied therefore that it is likely that she was the controller of that company.

Spouses are "associates" of each other. I am satisfied therefore that the two companies were controlled by individuals who were associates of each other and that accordingly the companies were associates of each other. I do not believe it makes any difference that the second part of section 184(3)(a) uses "persons" and "controllers" (in the plural); by section 6 of the Interpretation Act 1978 the plural includes the singular. I must therefore consider whether Mr P has a claim for misrepresentation against CIS which controls both MT and HM.

Was Creation jointly responsible for any breach of contract or misrepresentation?

S.75 CCA states that in certain circumstances, when a debtor has a claim against a supplier in respect of a misrepresentation or breach of contract, they will have a like claim against the creditor. So here, Mr P (the debtor) was asking Creation (the creditor) to answer his claims about what he said had gone wrong.

As part of the overall arrangement, Mr P received a book of vouchers which he could use to buy a range of goods and services. I gather from other complaints these were routinely produced towards the end of the sales process. The sale of the vouchers was set out as a separate contract and was paid for separately, as I have described above.

Having reviewed the invoice and receipt associated with the vouchers, however, I do not believe it reflects the reality of what happened here. The card payment that was actually made was deducted from the overall sum due under the contract with CIS.

It is not for me to speculate on the reasons for producing a separate invoice for vouchers, rather than including them in the overall package. In the circumstances, however, I am not persuaded that the purchase of vouchers recorded in the invoice constituted a separate contract which was financed by the card payment. Either it was (despite what is claimed on the invoice) part of the overall deal, or it was only partially funded by the card payment. It follows that the main contract was partly funded by the card payment and that Mr P has a claim against the Bank in the same way he has a claim against CIS.

I have considered Creation's argument that there was no debtor-creditor-supplier ("DCS")

agreement in place due to the payment being made to GCEN. My understanding that is that it offers a money remittance service by which customers instruct it to send a sum of money to someone else. The customer supplies the money (along with any fees) to the money remittance service first, and the transaction the customer is financing is the money remittance service, not the underlying transaction with whatever business they intend ultimately to pay.

However, Mr P paid £500 direct by credit card to the supplier HM and so there is a valid DCS agreement and this engages s. 75 and allows Mr P to claim for losses which were paid via other means, such as the payment which went via GCEN.

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.

As I have indicated, the written contract terms were, at best, opaque, and dealt primarily with the Monster Credits scheme itself. Mr P was told that he would be able to sell those credits after 14 months and recover their expenditure. In addition, he was given hope that he would be released from the existing timeshare obligations.

On balance, I think it more likely than not that he was told that, or something very similar. The only reason he met with CIS in the first place was because he wanted to be released from the holiday club arrangements. It seems unlikely that he wanted to spend more money on further arrangements of questionable use and value to them. And if the only benefit they were buying was the Monster Credits, there was no reason to include reference to the points they held with the existing timeshare business. Nor was there any reason to describe the agreement as including a timeshare trade-in.

I believe too that what Mr P was told was not true. It is not clear of he has been released from the holiday club membership, but he has not said that he has. I do not believe either that there is any realistic market for the Monster Credits he bought. They are only likely to be sold in connection with a promise to release other clients from timeshare or similar obligations.

In my view, there's a high likelihood that a claim in misrepresentation – were it practical to bring one – would succeed.

I currently intend to direct Creation to pay Mr P:

• £500 for the payment made on Mr P's credit card on 31 October 2014, plus interest at 8% per year simple.

• £9,350 for the payment made from Mr P's current account (including payment fee) on 26 November 2014, plus interest at 8% per year simple.

The interest is to be calculated from the date of the two payments to the date Creation pays compensation. It runs from the date the payments were made as it is to compensate Mr P for the time he was out of pocket and, as I find he wouldn't have made any payments but for the misrepresentations, that was the date he first made payment to HM. By law Creation may need to take tax from this interest. If it does so, it should provide Mr P a certificate setting out how much tax was paid if he requests one."

Both parties agreed with my provisional decision. Creation asked that Mr P "provide a bank statement dated within the last 3 months clearly showing his name, address, the name of his

bank, sort code and account number together on one page. Please note we don't need to see any transactions. This is for security purposes only”

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 both parties have accepted my provisional decision it stands unamended.

Putting things right

Creation should pay Mr P:

• £500 for the payment made on Mr P’s credit card on 31 October 2014, plus interest at 8% per year simple.

• £9,350 for the payment made from Mr P’s current account (including payment fee) on 26 November 2014, plus interest at 8% per year simple.

The interest is to be calculated from the date of the two payments to the date Creation pays compensation. It runs from the date the payments were made as it is to compensate Mr P for the time he was out of pocket and, as I find he wouldn’t have made any payments but for the misrepresentations, that was the date he first made payment to HM. By law Creation may need to take tax from this interest. If it does so, it should provide Mr P a certificate setting out how much tax was paid if he requests one.”

My final decision

My final decision is that I uphold this complaint and direct Creation Financial Services Limited to pay redress as set out above.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr P to accept or reject my decision before 9 June 2025.

Ivor Graham
Ombudsman