CHOICE

Wednesday 26 June 2019

Australian Securities and Investments Commission

Dear ASIC

RE: **Misconduct in the timeshare industry**

CHOICE welcomes ASIC's renewed focus on improving conduct and restoring trust in Australia's financial systems. In light of this, we would like to again highlight unlawful and unethical conduct within the timeshare industry.

CHOICE has serious concerns about the quality of advice provided by the timeshare provider Classic Clubs Limited (trading as Classic Holidays). The advice that the operator provides is misleading in nature and given the scope of advice, fails to be in the client's best interests. Inappropriate or harmful timeshare advice has a devastating impact on the financial wellbeing of people and we encourage ASIC to escalate this as an enforcement priority.

This specific conduct is emblematic of the broader industry and we ask that ASIC continue its investigation of the timeshare industry. CHOICE has previously written to ASIC, notably in February 2018 regarding a case with Ultiqa timeshare, raising concerns about the quality of financial advice associated with timeshare products. We acknowledge that since then, ASIC has investigated practices within the industry. It is imperative that ASIC acts to require that this industry comply with basic consumer protections in the Corporations Act.

CHOICE is concerned about:

- **The length and cancellation of contracts**: Advisers selling timeshare products appear to be making misleading claims (ss 1041E of the Corporations Act) about the length and options for exiting a timeshare scheme contract. This is especially evident in representations about hardship provisions.

- **The scope of financial advice provided**: Advisers selling timeshare products are not meeting their best interests duty (ss 961B & 961G of the Corporations Act) when they sell single timeshare products offered by a single timeshare provider, and base their recommendations on a limited scope of advice that excludes considering the financial circumstances of the consumer.

The following complaint provides an example of such breaches of the Corporations Act. In this case study, Classic Holidays represented that a 99-year contract would continue after the member's death and that claims would be made on the member's estate after death. Classic Holidays subsequently represented that the member was eligible for hardship relief and offered a shorter 6-year contract costing $12,500 over the life of the contract. On the basis of these representations and believing that death would not exempt the member from their financial obligations to Classic Holidays, the member accepted the shorter 'hardship relief' contract. Worryingly, Classic Holidays appears to have relied on mention of ASIC decisions to justify its approach to hardship relief.

Case study: Classic Holidays

The member, aged 87, bought a share certificate for ownership of a specific time period scheme at Pacific Palms Resort with her late husband in 1985. The Resort is listed with Classic Holidays. The member's contract length is 99 years, ending in 2084.

Her daughter, Ms X, approached CHOICE in April 2019 seeking advice on how to exit the member's contract with Classic Holidays in the event of the member's death. Ms X raised concerns that the contract would extend beyond her mother's death and that any remaining debt would be settled out of her mother's estate. Ms X had received representations to this effect from Classic Holidays previously.

Misleading claims about the length and cancellation of contracts

Oral statements and representations made by timeshare representatives are providing inaccurate information to consumers. This inaccurate information is leading consumers to purchase products inappropriate for their needs and to the detriment of their financial lives.

In the case of Ms X, the timeshare representatives deliberately led Ms X to believe that Classic Holidays would be able to make a claim on the member's estate in the event of her death. Ms X emailed a sales consultant at Classic Holidays, seeking to clarify what would happen to the 99-year contract in the event of the member's death. The sales consultant telephoned Ms X in response stating that:

> "The liability of the annual fees will pass on to the beneficiaries of the estate. If annual fees are not paid, then first they add interest then if remain unpaid, [Classic Holidays] will get debt collectors."[1]

When Ms X responded saying it was her understanding that the beneficiaries of the estate would not be liable for the ongoing annual fees, the sales consultant insisted that:

[1] Quotes provided by complainant in email to CHOICE from written notes made at time of conversation.

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“That is the law. If you want to disagree you need to go to an Australian lawyer who specialises in timeshares and they will tell you the same thing. I’ve been doing this for seven years and that is how it works.”

This advice was also echoed by timeshare brokers at timesharebrokers.com.au, who Ms X had previously consulted.

These representations of the options available to the member and her family in the event of death are misleading and deceptive. Classic Holidays repeatedly represented that not even death would exempt the member from her financial obligations to the timeshare scheme.

“I have asked in the past though, and Classic Holidays were clear that they could not “take over” our unit share, or allow us to buy out of the contract. They were clear that I needed to try to sell the unit, rather than leave it to be sorted out after Mum’s passing… I was left with a clear impression that the obligations were not going to go away if Mum should die, so we should sort it out now.”

Ms X’s case is just one of many complaints made to CHOICE concerning poor representations of timeshare contracts, specifically on a member’s ability to cancel or transfer a membership. Providing ‘appropriate advice’ (s961G of the Corporations Act) should require that sales representatives consider onerous contractual terms associated with timeshare products, such as restrictions on transfer or termination and excessive contract length.

Clearer guidance within Product Disclosure Statements in relation to transfer, cancellation and termination due to death would assist consumers in understanding their rights and obligations.

Sales conduct

Ms X sought to terminate the contract with Classic Holidays by offering to buy-out of the contract. This offer was rebuffed twice. Instead, Classic Holidays offered Ms X the option to trade-in the unit share certificate in exchange for a points-based 6-year contract, at a minimum cost of $12,500 (over its lifetime).

Classic Holidays offered this shorter-term option on the basis of ‘hardship’ due to the member’s age (over 75 years). The sales representative stated that “this was the option they were offering to satisfy ASIC.” Ms X had heard that ASIC were reviewing timeshare schemes and so accepted that this was likely to be true. As a result of these representations, Ms X settled for the offer available as she understood it was compliant with the law and was the only way her mother could exit the 99-year contract.

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> "Whilst it still seems a grey area as to how timeshare obligations will be treated by Classic Holidays in the case of the owner passing away, we decided not to take that risk. We preferred to make a clean exit rather than deal with it after Mum passes away, or raising a complaint if they do try to insist that beneficiaries of the will are liable for timeshare obligations."

The offer to purchase the 6-year membership as hardship relief does not satisfy ASIC's requirement that members must not pay any shortfall or further payments after they forfeit their interests in hardship circumstances. Classic Holidays' claim that the offer was compliant with ASIC's new requirements and the law were equally deceptive, as they encouraged Ms X to believe that this offer was common and best practice.

Poor financial advice and best interest obligations

The best interests duty (ss 961B & 961G of the Corporations Act) should put the client in a better position as a result of financial advice given. Any financial advice provided should consider the long term financial impact on the client, rather than limiting advice to consumers' short term circumstances.

In reviewing this complaint, we assessed the Statement of Advice (SOA) provided to the member for the new 6-year contract. The SOA is based on a holiday survey that was not provided to the member. The SOA also states that the financial adviser has not "considered your financial circumstances or financial position in making our recommendation".

In 2017, the member was also repeatedly cold-called by Classic Holidays and offered additional weeks at $400-$500 each without seeking information about her financial circumstances. On learning that the member had made further commitments to Classic Holidays, Ms X attempted to nullify the sale. Classic Holidays denied that the sale had occurred under duress, and made contact with the member again to confirm that she had consented to the sale. Ms X subsequently requested that Classic Holidays no longer contact the member by telephone, fearing that due to her age and difficulty asserting herself over the phone, the member was susceptible to high pressure sales tactics.

Timeshare representatives who do not collect information about the client's financial circumstances when offering financial advice are not providing adequate advice. Similarly, subjecting clients to high pressure sales tactics for products that do not take into consideration the client's vulnerability and personal circumstances are not compliant with the best interests duty.

The unlawful conduct demonstrated in this case study warrants further investigation by ASIC with a view to bringing forward an enforcement action against Classic Holidays.

For further information please contact CHOICE on eturner@choice.com.au

Yours sincerely,

Erin Turner
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