

The complaint

In summary, Mr M's complaint is that Mitsubishi HC Capital UK PLC (the 'Lender') acted unfairly and unreasonably by providing him with a loan to purchase membership of a Timeshare, from a provider (the Supplier), which he believes is a scam. He has struggled to keep up with the loan payments, hasn't been able to book holidays and was coerced into signing up for membership.

What happened

Mr M purchased membership of a timeshare (Fractional Club Membership) from a Timeshare provider (the 'Supplier') in August 2013 (the 'Time of Sale.') He and his partner entered into an agreement with the Supplier to buy 1,010 points at a cost of £18,269 (the 'Purchase Agreement').

Mr M financed the purchase by taking out a loan for £22,633 in his sole name. The loan consolidated the outstanding balance of a previous loan of £3,708.66 taken out to purchase a Trial membership with the Supplier.

Mr M, with the assistance of his representative, complained to the Lender in September and October 2017. The Lender dealt with Mr M's concerns as a complaint and issued its final response letter in November 2017, rejecting it on every ground.

The complaint was assessed by an Investigator. Having considered the information on file, they rejected the complaint on its merits.

Mr M disagreed with the Investigator's assessment. As a result, the complaint has been passed to me for review.

The legal and regulatory context

In considering what is fair and reasonable in all the circumstances of the complaint, I am required under DISP 3.6.4R to take into account: relevant (i) law and regulations; (ii) regulators' rules, guidance and standards; and (iii) codes of practice; and (where appropriate), what I consider to have been good industry practice at the relevant time.

The legal and regulatory context that I think is relevant to this complaint is, in many ways, no different to that shared in several hundred published ombudsman decisions on very similar complaints – which can be found on the Financial Ombudsman Service's website. And with that being the case, it is not necessary to set out that context in detail here. But I would add that the following regulatory rules/guidance are also relevant:

The Office of Fair Trading's Irresponsible Lending Guidance – 31 March 2010

The primary purpose of this guidance was to provide greater clarity for businesses and consumer representatives as to the business practices that the Office of Fair Trading (the 'OFT') thought might have constituted irresponsible lending for the purposes of Section

25(2B) of the CCA. Below are the most relevant paragraphs as they were at the relevant time:

- Paragraph 2.2
- Paragraph 2.3
- Paragraph 5.5

The OFT's Guidance for Credit Brokers and Intermediaries - 24 November 2011

The primary purpose of this guidance was to provide clarity for credit brokers and credit intermediaries as to the standards expected of them by the OFT when they dealt with actual or prospective borrowers. Below are the most relevant paragraphs as they were at the relevant time:

- Paragraph 2.2
- Paragraph 3.7
- Paragraph 4.8

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.

And having done that, I do not think this complaint should be upheld. However, before I explain why, I want to make it clear that my role as an Ombudsman is not to address every single point that has been made to date. Instead, it is to decide what is fair and reasonable in the circumstances of this complaint. So, if I have not commented on, or referred to, something that either party has said, that does not mean I have not considered it.

Although the Fractional Club membership was taken out in joint names by Mr M and his partner, the loan used to finance their purchase was taken out in Mr M's sole name. So, I will refer to Mr M throughout the rest of my decision.

Section 140A of the CCA: did the Lender participate in an unfair credit relationship?

¹

Mr M appears to be saying that the credit relationship between him and the Lender was unfair to him as a result of the actions of the Supplier. And I think those concerns are best considered under S140A of the CCA.

Having considered the entirety of the credit relationship between Mr M and the Lender along with all of the circumstances of the complaint, I don't think the credit relationship between them was likely to have been rendered unfair for the purposes of Section 140A. When coming to that conclusion, and in carrying out my analysis, I have looked at:

1. The standard of the Supplier's commercial conduct – which includes its sales and marketing practices at the Time of Sale along with any relevant training material;
2. The provision of information by the Supplier at the Time of Sale in relation to Fractional Club membership, including the contractual documentation and disclaimers made by the Supplier;
3. The commission arrangements between the Lender and the Supplier at the Time of Sale and the disclosure of those arrangements;

¹ Although not expressed this way by Mr M, I think his concerns are best understood by being framed as complaints about the Lender's duties under the CCA.

4. Evidence provided by both parties on what was likely to have been said and/or done at the Time of Sale;
5. The inherent probabilities of the sale given its circumstances; and, when relevant
6. Any existing unfairness from a related credit agreement.

I have then considered the impact of these on the fairness of the credit relationship between Mr M and the Lender given his circumstances at the Time of Sale.

The Supplier's sales & marketing practices at the Time of Sale

Mr M's complaint about the Lender being party to an unfair credit relationship was and is made for several reasons.

He says for instance that:

1. He has struggled to keep up with the loan repayments
2. He was coerced by the Supplier into purchasing Fractional Club membership at the Time of Sale.

However, neither of these strike me as reasons why this complaint should succeed. I say this because it seems to me that Mr M is suggesting that he couldn't afford the loan repayments. But I haven't seen anything to persuade me that the right checks weren't carried out by the Lender, given this complaint's circumstances. And even if I were to find that the Lender failed to do everything it should have when it agreed to lend (and I make no such finding), I would have to be satisfied that the money lent to Mr M was actually unaffordable, before also concluding that he lost out as a result, and then consider whether the credit relationship with the Lender was unfair to him for this reason. But from the information provided, I am not satisfied that the lending was unaffordable for Mr M.

Mr M has also suggested that he was coerced by the Supplier into purchasing Fractional Club membership at the Time of Sale. I acknowledge that Mr A may have felt weary after what may have been a lengthy sales process.

But he says little about what was said and/or done by the Supplier during the process, that made him feel as if he had no choice but to purchase the Fractional Club membership, when he simply did not want to.

Mr M was given a 14-day cooling off period and he has not provided a credible explanation for why he did not cancel his membership during that time. And with all of that being the case, there is insufficient evidence to demonstrate that Mr A made the decision to purchase Fractional Club membership, because his ability to exercise that choice was significantly impaired by pressure from the Supplier.

The provision of information by the Supplier at the Time of Sale

Mr M has said the maintenance fees he paid continued to rise, and he appears to be saying that he wasn't given sufficient information at the Time of Sale by the Supplier about the ongoing costs of Fractional Club membership.

I also need to consider what impact that breach (if there was one) had on the fairness of the credit relationship between Mr M and the Lender under the Credit Agreement and related Purchase Agreement, as the case law on Section 140A makes it clear that regulatory breaches do not automatically create unfairness for the purposes of that provision. Such breaches and their consequences (if there are any) must be considered in the round, rather than in a narrow or technical way. The extent to which such mistakes render a credit relationship unfair must also be determined according to their impact on the complainant.

I acknowledge that it is possible that the Supplier did not give Mr M sufficient information, in good time, on the various charges he could have been subject to as a Fractional Club member in order to satisfy the requirements of Regulation 12 of the Timeshare Regulations (which was concerned with the provision of 'key information'). But even if that was the case, I cannot see that the ongoing costs of membership were applied unfairly in practice. And as Mr M hasn't persuaded me that he would not have pressed ahead with his purchase had the finer details of the Fractional Club's ongoing costs been disclosed by the Supplier in compliance with Regulation 12, I cannot see why any failings in that regard are likely to be material to the outcome of this complaint given its facts and circumstances.

I'm also satisfied that Mr M received the relevant information about the finance agreement he entered into. I say this because the loan agreement he signed set out the amount of credit he was borrowing, the duration of the agreement, the monthly repayment, the rate of interest, the total charge for credit and the total amount payable. So, I'm satisfied that Mr M was provided with the relevant information about the loan and the rate of interest that applied to it, and that as a result, he was aware of the terms of the loan he was taking out.

Section 75 of the CCA: The Supplier's Breach of Contract

The CCA introduced a regime of connected lender liability under Section 75 that affords consumers ("debtors"), a right of recourse against lenders that provide the finance for the acquisition of goods or services from third-party merchants ("suppliers"), in the event that there is an actionable misrepresentation and/or breach of contract by the supplier.

Certain conditions must be met if the protection afforded to consumers is engaged, including, for instance, the cash price of the purchase and the nature of the arrangements between the parties involved in the transaction. The Lender doesn't dispute that the relevant conditions are met. But for reasons I'll come on to below, it isn't necessary to make any formal findings on them here.

Mr M says that he could not holiday where and when he wanted to – which, on my reading of the complaint, suggests that the Supplier was not living up to its end of the bargain, potentially breaching the Purchase Agreement.

Yet, like any holiday accommodation, availability was not unlimited – given the higher demand at peak times, like school holidays for instance. Some of the sales paperwork likely to have been signed by Mr M states that the availability of holidays was/is subject to demand. I accept that he may not have been able to take certain holidays. But I have not seen enough to persuade me that the Supplier had breached the terms of the Purchase Agreement.

So, from the evidence I have seen, I do not think the Lender is liable to pay Mr M any compensation for a breach of contract by the Supplier. And with that being the case, I do not think the Lender acted unfairly or unreasonably in relation to this aspect of the complaint either.

Overall conclusion

In conclusion, given the facts and circumstances of this complaint, I do not think that the Lender acted unfairly or unreasonably when it dealt with Mr M's Section 75 claim. I am not persuaded that the Lender was party to a credit relationship with him under the Credit Agreement and related Purchase Agreement that was unfair to him for the purposes of Section 140A of the CCA. And having taken everything into account, I see no other reason why it would be fair or reasonable to direct the Lender to compensate him.

My final decision

For the reasons set out above, my decision is not to uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 19 February 2026.

Simon Dibble
Ombudsman