

The complaint

Mr K's complaint is, in essence, that Mitsubishi HC Capital UK Plc trading as Novuna Personal Finance ('Mitsubishi') acted unfairly and unreasonably in relation to a complaint he made about a timeshare he bought using credit from Novuna.

The complaint is only in Mr K's name as only he was named on the Credit Agreement. But, I will refer to both Mr and Mrs K throughout this decision as the timeshare in question was in both of their names.

What happened

Mr and Mrs K purchased membership of an asset-backed timeshare called the Fractional Property Owners Club ('FPOC') from a timeshare provider (the 'Supplier') on 21 December 2014 (the 'Time of Sale'). They bought 1,200 Fractional Points at a cost of £12,494.

Mr and Mrs K paid for their FPOC membership by taking finance from Mitsubishi in Mr K's name (the 'Credit Agreement').

Under the terms of the FPOC, Mr and Mrs K could exchange their Fractional Points for holidays. And, at the end of the projected membership term, they also had a share in the sale proceeds of a property tied to their membership (the 'Allocated Property'). As their interest in the Allocated Property was limited to a share in its net sale proceeds, they didn't have any preferential rights to stay in the Allocated Property or use it in any other way.

Mr and Mrs K wrote to both the Supplier and Mitsubishi on 20 May 2020 to complain. They said:

- The promotional holiday where they were sold the membership was induced by a misrepresentation as they were told the holiday would incur no obligation on their part but this was false.
- They were pressured into the sale due to the techniques and process used.
- The product was misrepresented because the availability of resorts was less than promised and the amenities of resorts is sometimes of poorer quality than promised. And, the resorts are not as safe as originally promised.
- The ongoing costs in terms of fees were not explained adequately.
- They asked the salesperson what would happen in the event that the UK would leave the European Union and they were promised this would not affect them. But, in retrospect the Supplier wasn't in a position to make such a guarantee and shouldn't have done so because at the time of the complaint, the position regarding the UK's exit from the European Union remained inconclusive and there was no certainty as to how UK citizens might face disadvantage in terms of holidaying abroad.
- The documents provided referred to numerous different organisations with a connection to the Supplier and this was ambiguous and unclear.

Mitsubishi didn't initially issue a response to that complaint.

So, Mr and Mrs K referred their complaint to the Financial Ombudsman Service on 20 August 2020.

Mitsubishi then issued its final response letter on 21 October 2022, rejecting the complaint.

The complaint was then assessed by an Investigator who, having considered the information on file, rejected the complaint on its merits on 26 November 2023.

Mr and Mrs K disagreed with these findings and asked for the matter to be referred to an Ombudsman for a final decision to be made. They provided further comments, largely repeating the points they had made previously, albeit with more detail.

As agreement on the outcome could not be reached, the complaint has been referred to me to make a final decision.

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.

When making my decision, I'm required by DISP 3.6.4 R of the Financial Conduct Authority's handbook to take into account the:

“(1) relevant:

(a) law and regulations;

(b) regulator's rules, guidance and standards;

(c) codes of practice; and

(2) ([when] appropriate) what [I consider] to have been good industry practice at the relevant time.”

Where evidence is incomplete, inconclusive, or contradictory, I make my decision on the balance of probabilities i.e., what I think is more likely than not to have happened based on the evidence available and the wider circumstances of the complaint.

My role as an Ombudsman isn't to address every single point which has been made to date, but to decide what is fair and reasonable in the circumstances of this complaint. If I haven't commented on, or referred to, something that either party has said, this doesn't mean I haven't considered it.

Rather, I've focused here on addressing what I consider to be the key issues in deciding this complaint and explaining the reasons for reaching my final decision.

Finally, when bringing their complaint, Mr and Mrs K only mentioned a Section 75 claim. They didn't set out what other regulatory or legal basis they felt Mitsubishi needed to do something to put right what they said went wrong – I make no criticism of them in not doing so as I wouldn't expect them to necessarily know these things. Our Investigator considered the complaint and thought parts of it amounted to complaints that could be considered under the Consumer Credit Act 1974 (the 'CCA'), including Section 140A and, having considered everything, I agree. So, I've reflected that in my approach to this complaint.

Mr K's complaint about the Supplier's misrepresentations

Mr and Mrs K say that there were a few elements to FPOC membership that were misrepresented by the Supplier, leading them into their purchase of the FPOC membership. To reiterate briefly, those were:

- They were told the promotional holiday would incur no obligation on their part but this was false.

- The product was misrepresented because the availability of resorts was less than promised and the amenities of resorts is sometimes of poorer quality than promised. And, the resorts are not as safe as originally promised.
- They asked the salesperson what would happen in the event that the UK would leave the European Union and they were promised this would not affect them, but this remained uncertain at the time of the complaint.

In order for me to say there was a misrepresentation made by the sales agent in the sale of the FPOC membership, I would have to say that there is evidence that Mr and Mrs K were told something that was not true and that included them into taking out FPOC membership. If that was found, it's possible that Mitsubishi could be jointly liable with the Supplier for those misrepresentations under the operation of Section 75 of the CCA.

Regarding the promotional holiday, Mr and Mrs K have said they thought this was a free holiday with no obligations such as attending a sales presentation, but they've now realised this was the purpose of such a holiday being offered. I'm unclear as to why Mr and Mrs K would have thought they'd be offered such a holiday from a timeshare supplier, if not in an attempt to sell them a timeshare when on holiday. But, in any event, they've only said they were told there was no obligation on their part and haven't provided further detail beyond that. It seems more likely that this was in reference to the fact that there was no obligation on Mr and Mrs K's part to make a purchase as a result of going on the holiday, which is true. And, this alleged misrepresentation didn't occur during, and doesn't relate to, the purchase of the product itself. So, I don't see how this would have affected their understanding of how the product they were purchasing worked or the key features of it.

In terms of the availability, quality, amenities and safety of the resorts, Mr and Mrs K haven't provided any detail about what exactly they were told or promised in this regard at the Time of Sale in 2014.

And, I can see from Mr and Mrs K's signed Information Statement it explains that specific details relating to facilities offered may change and that space is subject to availability and seasonal demand. I can't see that another other guarantees were made.

Mr and Mrs K also said they felt there was a misrepresentation because they were told the UK leaving the European Union wouldn't affect them but it remained uncertain whether it would. Again, they haven't expanded further as to what exactly they were told about this at the time of sale. But since making this allegation, Mr and Mrs K have not explained further in what way the UK leaving the European Union has actually affected their Fractional Rights to take holidays. If anything was said to Mr and Mrs K (something I note would have happened around eighteen months before the 'Brexit' referendum), I can't see that a statement that it would have had no effect on their holidaying right would have been untrue. And again, I don't see how this would have affected their understanding of how the product they were purchasing worked or the key features of it.

In short, therefore, I have not seen enough evidence to say, on balance, that any alleged false statements of fact were made to Mr and Mrs K by the Supplier.

So, having considered everything, and without a more detailed description of the conversation(s) surrounding the alleged misrepresentations, or any supporting evidence, Mr and Mrs K's claim of misrepresentation doesn't have sufficient weight to succeed. I recognise that they have concerns about the way in which their FPOC membership was sold, which I address further below. But, given the evidence in this complaint, I'm not persuaded that there was an actionable misrepresentation by the Supplier for the reasons Mr K alleges. And, for that reason, I don't think it was unfair or unreasonable for Mitsubishi to turn down a Section 75 claim.

Mr K's complaint that Mitsubishi hadn't treated them fairly

I've already explained why I'm not currently persuaded that the contract entered into by Mr and Mrs K was misrepresented by the Supplier. But there are other aspects that, being the subject of Mr and Mrs K's dissatisfaction, I need to explore in more detail. These include being pressured into the sale, the annual fees not being adequately explained to them and the documentation in relation to the different companies connected to the Supplier being unclear.

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

Mr and Mrs K have told our Service that the sales process lasted several hours, and various 'tactics' were used by the Supplier to convince them into making the purchase.

From what I know of the Supplier's general sales practices at this time, I don't doubt that the sales process Mr and Mrs K attended was lengthy. But I don't think the testimony provided sufficiently supports that any malicious or undue pressure was applied to them during the sale, such as to cause them to buy something they otherwise wouldn't have done.

They've said it was suggested by the sales representative that their children could go and play in a nearby play area while they spoke. And, that they were given cigarettes and beers, something disputed by the Supplier. They've also said there were multiple sales representatives who were friendly, outgoing and trained in salesmanship.

In terms of a description of the conversation(s) which took place, Mr and Mrs K have said they were asked questions about themselves as a couple, their employment and their finances.

I acknowledge what Mr and Mrs K have said, but in my view, the 'tactics' that have been described are rather open to personal interpretation and mostly seem to be offers or suggestions of certain things, which I can't see Mr and Mrs K had to accept or go along with. They themselves have said they only did so out of a 'politeness' on their part, as opposed to being forced or pressured by the sales representative in a malicious or unduly harsh way.

Mr and Mrs K don't describe any further exactly what was said during these conversations, apart from that they were asked questions about their lives and finances, which isn't unusual or inappropriate for such a purchase. So, from the evidence provided, whilst I accept the sales staff were likely highly trained in sales techniques, I'm not sufficiently persuaded the sale was so pressured it caused them to buy something they otherwise wouldn't have done, nor do I think this created an unfair relationship that requires a remedy.

It is also important to note that Mr and Mrs K were also given a 14-day 'cooling off' period following the sale, during which time they could cancel the purchase and the associated Credit Agreement without penalty. I acknowledge that they've said they continued to be harassed by the sales representatives post-sale and have said there was a follow up conversation with one of the Supplier's representatives soon after the sale, but they haven't explained what was said during this conversation, only that the representative spoke mainly with Mrs K for about an hour. And, from what I can see, this didn't mean the whole cooling off period wasn't available to them or that this prevented them from withdrawing from the purchase if they wished after that conversation had happened.

Lastly, I note that, in my view, the main reasons Mr and Mrs K say they're unhappy with the membership relate to the availability and quality of resorts and the amenities available within them. So, it would seem likely that they made their purchase due to wanting to take holidays, as opposed to purely because they were pressured into it.

I don't therefore think this is a reason to uphold this complaint given its circumstances.

The provision of information at the Time of Sale

Mr and Mrs K say that the annual maintenance fees were not adequately explained to them. But, they haven't expanded on this point with any further detail such as what they were told about the fees at the Time of Sale, or what information they felt they should have been given that they weren't.

It also wasn't explained further how exactly they felt this caused an unfairness in the relationship between Mr K and Mitsubishi.

But, in any event, it seems likely to me that Mr and Mrs K were told by the Supplier at the Time of Sale that the annual maintenance fees were payable each year and that they may increase. For example, I can see in their signed Information Statement it explains owners will be required to contribute to the charges for management, repair and maintenance of the property by means of an annual charge, payable whether weeks are used or not. And, that the charges will be budgeted annually and will be subject to increase or decrease as determined by the costs of managing the project and are payable in advance each year. It also explained that the first year of fees was 995 Euros.

There also isn't any suggestion from Mr and Mrs K that they have concerns about the terms of the contract governing the ongoing costs.

So, while it's possible the Supplier didn't give Mr and Mrs K sufficient information, in good time, on the various charges they could have been subject to as FPOC members, in order to satisfy its regulatory responsibilities at the Time of Sale, I haven't seen enough to persuade me that this, alone, rendered Mr K's credit relationship with Mitsubishi unfair to him.

Mr and Mrs K also said that the documentation provided was ambiguous regarding the different companies connected to the Supplier. But, even if this was the case, I've not been provided with any reason why such companies being connected to the Supplier was unfair given the circumstances, so I can't say this led to an unfairness that requires a remedy in this case.

Conclusion

Overall, taking into account all facts and circumstances of this complaint, I don't think that Mitsubishi acted unfairly or unreasonably in declining Mr K's complaints, and I'm not persuaded that Mitsubishi was party to a credit relationship with Mr K under the Credit agreement that was unfair to him. And, having taken everything into account, I see no other reason why it would be fair or reasonable to direct Mitsubishi to compensate Mr K.

My final decision

For the reasons set out above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 1 July 2024.

Fiona Mallinson
Ombudsman