

## The complaint

Mrs G complains that Mitsubishi HC Capital UK Plc trading as Hitachi Capital (“HC”) acted unfairly when considering its responsibilities under the Consumer Credit Act 1974 (the “CCA”) in relation to a loan they provided to fund a timeshare purchase.

## What happened

In August 2017, while on a promotional holiday, Mrs G and her husband met with a timeshare supplier who I’ll refer to as “C”. During that meeting, they agreed to purchase a timeshare product known as a Fractional Property Owners Club (“FPOC”) membership from C. The purchase price of £22,201 was funded using a loan from HC in Mrs G’s sole name with a repayment term of 180 months.

In October 2020, Mrs G telephoned HC to make a complaint about her purchase and the associated loan. In particular, Mrs G said:

- She was pressurised into the sale;
- She signed the purchase agreement before the sales presentation;
- She wasn’t verbally told about the 14-day cooling off period; and
- she was mis-sold the purchase agreement and nothing was explained.

In response to an email update Mrs G received from HC, she provided them with more details about her concerns. In addition to the points initially raised with HC, she said:

- C had mis-sold membership of the FPOC through high pressure bullying tactics;
- C told her (and her husband) they were fractional owners, but the contracts weren’t notarised, despite being a requirement under Spanish Law;
- C told them they would buy back their membership of the FPOC if they wanted to sell it, but that wasn’t true;
- C told them they’d be able to book a holiday whenever they wanted to, but availability was poor;
- high maintenance fees weren’t explained and continued to rise each year;
- they weren’t given a chance to read the loan agreement.
- they thought they’d signed up to something that they partly owned and could pass to their dependents; and
- it seemed as if FPOC membership was an investment from the way it was sold to them.

Although HC acknowledged her complaint, Mrs G says she didn’t receive a written response from them. So, she decided to refer her complaint to this service.

Mrs G also pointed out that HC had made a mistake when recording the reasons for her initial complaint insofar as the agreements were actually signed after the sales presentation, not before.

HC provided this service with a copy of their response, albeit Mrs G said she hadn't previously received it. HC didn't uphold Mrs G's complaint. In particular they referred to and explained the process completed by C at the time of sale and the documentation Mrs G was provided with and signed. HC said the documents clearly included information on the 14-day withdrawal period applicable to both the FPOC membership and the loan.

One of this service's investigators considered all the evidence and information available. Having done so, our investigator didn't think there was any reason to uphold Mrs G's complaint.

Unhappy with our investigator's findings, Mrs G asked for her complaint to be referred to an ombudsman. So, it was passed to me to consider further.

### **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 don't think it should be upheld.

Before I explain why, I want to make it clear that I've based my decision 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. And when doing that, my role isn't to address every single point that's been made. So, I'm only going to refer to what I believe are the most salient points having considered everything that's been said and provided by both sides.

The CCA introduced certain protections that afforded consumers (like Mrs G) a right of recourse against lenders (like HC) that provide the finance for the acquisition of goods or services (like FPOC membership) from suppliers (like C).

The concerns Mrs G has about the sale of her FPOC membership only constitute a complaint that the Financial Ombudsman Service has the authority to consider if those concerns are considered with at least one of those provisions of the CCA in mind. So, that is what I've done in this decision.

Some of Mrs G's concerns appear to amount to allegations of misrepresentation by C. To conclude that there was misrepresentation by C, I would need to be persuaded, based on the available evidence, that C told Mr and Mrs G something that was factually untrue in relation FPOC membership that then led them to make their purchase.

I have considered Mrs G's recollections of what it's alleged was said and/or done by C at the time of sale alongside the other evidence available from that time, in order to determine what I think was most likely to have happened.

In particular, I've seen various documents that Mr and/or Mrs G signed. These include:

- a FPOC Application and Purchase Agreement;
- a Member's Declaration
- a FPOC Information Statement
- a HC Loan application form
- a Fixed Sum Loan Agreement

### **The product purchased**

Having considered all the documentation, Mr and Mrs G's FPOC membership appears to provide them with fractional rights in the form of points they could use to book holidays and experiences from a portfolio of properties and destinations offered by C. Included within their membership was their right to receive a proportionate share in the net sale proceeds of a property identified within the purchase agreement. However, the agreement didn't confer any

share in the ownership of that property. Only a share in the property's eventual net sale proceeds.

Mrs G says she thought the product related to something they partly owned and seemed like an investment. There's no suggestion by Mrs G that she was induced into the FPOC membership purchase on the promise of a profit by C. So, while there may have been an investment element to the FPOC membership, it appears that this was limited to receiving a share in the net sale proceeds of the allocated property when it's sold. And as far as I can see, C made no suggestion that Mr and Mrs G's share might result in a profit for them.

Given the agreement confers no property ownership, I don't think the contract required notarisation in the manner alleged.

#### Buy-back of the product purchased

Having read and considered all the documents I've referred to above, I haven't found anything to suggest C said they would buy back the FPOC product Mr and Mrs G purchased from them. The Member's Declaration which Mr and Mrs G signed says, *"We understand that [C], the Trustee or the Manager does not and will not run any resale or rental programmes and will not repurchase Fractions [...] or act as an agent in the sale other than as a trade in against future property purchase [...]"*. So, in the absence of any other evidence from the time, I can't reasonably conclude that C told Mr and Mrs G they would buy the FPOC product back from them.

#### Booking availability

Mrs G said she wasn't able to book her holidays, despite assurances from C. But I haven't seen any evidence that she wasn't able to successfully book the holidays she wanted. To the contrary, C have confirmed that their records show that where Mrs G was struggling to secure her preferred dates and destination, their "Member Services Team" assisted her in to securing acceptable bookings in 2018 and 2019. And as far as I'm aware, bookings made using the points Mr and Mrs G received under their FPOC membership were always subject to availability and confirmed on a first come first served basis.

#### The allegation of a pressured sale

I can understand why it may be argued that a prolonged presentation might have felt like a pressured sale – especially if, as Mr and Mrs G approached the closing stages, they felt that they were going to have to make a decision on the day in order to avoid missing out on an offer that may not have been available at a later date.

However, against the straightforward measure of pressure as it's commonly understood, I find it hard to argue that Mr and Mrs G agreed to the purchase in 2017 when they simply didn't want to. I haven't seen any evidence to demonstrate that they went on to say something to C, after the purchase, to suggest they'd agreed to it when they didn't want to. I accept that Mrs G did complain to C about the availability of holidays. But I haven't seen anything to suggest there was an allegation of a pressurised sale or otherwise.

I acknowledge that Mrs G insists her withdrawal rights weren't verbally pointed out or explained to her. But a statement from C suggests that wasn't the case. Where recollections conflict, I need to consider what other evidence is available. And the evidence shows that Mr and Mrs G signed a one-page document that clearly explained their right to withdraw within 14 days.

Mrs G admits that she didn't read the documents she signed. That was obviously her choice. But based upon the evidence available, I can't reasonably hold C or HC responsible for that choice.

#### Time to read and consider the information provided by C

Mrs G says she wasn't afforded time to read all the paperwork. I acknowledge that the sales process may have felt long and drawn out. But I don't find that unusual insofar as there

would've been a substantial amount of paperwork to work through and complete. So, it's likely it was unrealistic to have expected Mr and Mrs G to have read through everything they needed to in the time available.

That said, Mr and Mrs G did sign a one-page document in which they confirmed they'd received all the required notices and information and been given adequate time to review them. Had they had any concerns or questions, following completion of the sale, I believe they still had adequate time available to raise these with C after the sale was completed. But I haven't seen anything to suggest they did raise any concerns or questions within the 14-day cooling off period provided here.

Even if I was to find that Mr and Mrs G didn't have opportunity to read all the paperwork either during the sales presentation or the subsequent 14 days – and I make no such finding – Mrs G hasn't explained what it was they needed to know which ultimately would've led them to make a different decision.

#### The ongoing cost of maintenance fees

Whilst it's possible Mr and Mrs G may not have fully appreciated how the ongoing calculation of annual maintenance fees operated, it appears the one-page document they signed specifically referenced those charges. Furthermore, the evidence shows that Mr and Mrs G used their FPOC membership throughout 2018 and 2019 (including a bonus break in 2018) without raising any questions or concerns about the ongoing costs. It appears Mrs G didn't raise any concerns with HC until 2020. And from her recollections, it appears those concerns were prompted by a change in her personal circumstances impacting her finances thereafter. That said, Mrs G hasn't expanded upon those reasons. So, I can't fairly conclude that they resulted from anything done or reasonably foreseeable by either C or HC.

I've thought about whether the various terms and conditions of the purchase agreement appear to have been applied in such a way as to cause Mrs G detriment. I appreciate Mrs G will be disappointed but based upon the evidence provided, I haven't seen anything to suggest the terms of the purchase agreement were applied in such a way as to cause any unfairness in Mrs G's particular circumstances.

#### Summary

Having considered everything that's been said and provided, I don't think there's sufficient evidence from the time of the sale to support the various allegations. Because of this, and for the reasons explained above, I can't reasonably say that HC needs to do anything to put things right in this complaint. I do realise Mrs G will be very disappointed, but I won't be asking HC to do anything more.

#### **My final decision**

For the reasons set out above, I don't uphold Mrs G's complaint against Mitsubishi HC Capital UK Plc trading as Hitachi Capital

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs G to accept or reject my decision before 3 July 2024.

Dave Morgan  
**Ombudsman**