

The complaint

Mr G complains about the sale of a timeshare. He says that HSBC UK Bank Plc (who I'll call HSBC) financed the purchase and that he therefore has claims against it. Mr G has brought his complaint through a representative, so references to his submissions and arguments include those made on his behalf.

What happened

I issued a provisional decision on this complaint in January of this year. An extract from that provisional decision is set out below.

In June 2016 Mr G bought 4000 "Pure Points" in a timeshare club called Infiniti Club. He had been an owner of various timeshare products with the same company since 1999. He paid £4,500 for the points using his HSBC credit card.

Mr G complained to HSBC in March 2022. His claim was detailed but in essence he said he had a claim under sections 75 of the Consumer Credit Act 1974 (CCA) as the agreement had been misrepresented to him. He also said that aspects of the agreement had created an unfair relationship.

HSBC didn't think Mr G had provided sufficient evidence for them to consider his various claims and Mr G, therefore, escalated the complaint to this Service.

Our investigator considered what had happened but wasn't persuaded there was sufficient evidence to support Mr G's complaint.

Mr G didn't agree so the complaint has been referred to me, an ombudsman, to provide a decision.

What I've provisionally 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.

I'm issuing a provisional decision here as it's been some time since the investigator provided her view and I can see we didn't respond to all of the issues. I'm not currently expecting to uphold the complaint.

I'm required by DISP 3.6.4R of the Financial Conduct Authority's (FCA's) Handbook to take into account the relevant, laws and regulations; regulators rules, guidance, and standards; codes of practice and, when appropriate, what I consider to have been good industry practice at the relevant time.

The Financial Ombudsman Service is designed to be a quick and informal alternative to the courts under the Financial Services and Markets Act 2000 (FSMA). Given that, my role as an ombudsman is not to address every single point that has been made. Instead, it is to decide what is fair and reasonable given the circumstances of this complaint. And for that reason, I

am only going to refer to what I think are the most salient points. But I have read all of the submissions from both sides in full and I keep in mind all of the points that have been made when I set out my decision.

Mr G hasn't been able to supply a copy of the timeshare membership agreement he had, that he says was misrepresented to him and that forms the basis of much of his complaint. It's true that this Service has seen similar complaints about agreements with the same supplier, most of which we haven't supported. But in the absence of the timeshare contract and associated paperwork I don't think Mr G's testimony alone is reason to support his various claims.

The claim under the CCA

When something goes wrong and the payment was made with a credit card, as appears to be the case here, it might be possible to make a section 75 claim. This section of the CCA says that in certain circumstances, the borrower under a credit agreement has a right to make the same claim against the credit provider as against the supplier if there's either a breach of contract or misrepresentation by the supplier.

There's been no suggestion that all the necessary criteria for a claim to be made under section 75 haven't been met.

Section 56 of the CCA is relevant in the context of section 140A of the CCA that I think some of Mr G's claims fit better under, as the pre-contractual acts or omissions of the credit broker or supplier will be deemed to be the responsibility of the lender, and this may be taken into account by a court in deciding whether an unfair relationship exists between Mr G and the lender.

It's not for me to decide the outcome of a legal claim Mr G may have under sections 75 or 140A but I'm required to take the provisions into account when deciding whether the lender was reasonable to reject his claims.

The claim under section 75 of the CCA

Mr G says the agreement was misrepresented to him for several reasons. He says he was promised it was an investment but other than Mr G's testimony, I've not seen evidence to corroborate that or to corroborate Mr G's suggestion that he was promised the points would ensure he had better accommodation availability. Mr G also suggests he was told the accommodation he would be booking was exclusive to him as a member, but he's not provided any information to support that assertion. He had been a member of the supplier's timeshare schemes since 1999, so I think it's likely he would have had a good understanding of the availability on offer. Mr G also says the timeshare was misrepresented to him as there wasn't a secondary market through which his timeshare could be sold. But Mr G hasn't provided any information in support of that claim, and I'm not persuaded that his testimony alone is sufficient to evidence the matter.

I don't, therefore, think it's likely a court would uphold a claim under section 75, and I don't think HSBC were unreasonable to do so.

The claim under section 140A of the CCA

Section 140A CCA looks at the fairness of the relationship between a debtor and creditor arising out of the credit agreement (taken together with any related agreement).

I do not consider it likely that a court would conclude that the lender's acts and/or omissions,

or those of the supplier or credit broker as agents of the lender, generated an unfair debtor – creditor relationship.

Mr G relies upon a number of clauses in the Consumer Protection from Unfair Trading Regulations 2008 (CPUT Regulations) that his representatives suggest created an unfair relationship between him and the supplier. We know it is common that these sales presentations often lasted for a number of hours. I've therefore considered whether there is evidence that Mr G's ability to exercise choice was significantly impaired by the pressure and aggressive sales tactics he says he experienced. Mr G had already attended a number of presentations with the same supplier so I think he would have been likely to have had an understanding of the approach that would be taken. I don't think I've been provided with sufficient information to suggest Mr G didn't understand he didn't have to say yes to the agreement or that he didn't understand he could walk away without entering into it. And as Mr G hasn't provided any additional evidence I'm not persuaded that his ability to exercise choice was – or was likely to have been – significantly impaired contrary to Regulation 7 of the CPUT Regulations.

Mr G says that he was offered a special one off, time limited, price to accept the agreement and that was an aggressive sales practice in contravention of Schedule 1, clause 5 of CPUT. I've not seen any supportive evidence to suggest that was the case and I don't, therefore, think HSBC would be unreasonable to reject that complaint point.

Mr G says he agreed to purchase Pure Points because they enabled him to withdraw from a previous contract that meant he had liability for charges in perpetuity. He says that was an unfair term. But that concern is not about the contract he entered into for Pure Points, that HSBC financed, it's about a previous and unrelated agreement. In a letter to Mr G on 30 June 2016 the supplier explained to him that he would be able to surrender his points at no cost after a "minimum of five years", so it seems likely that this new agreement did achieve what Mr G was seeking from it.

Mr G has explained that the maintenance payment terms were so voluminous that he couldn't make an informed decision and he's suggested that was compounded because he was given no right to withdraw from the agreement. He's provided no further evidence to support that claim and I don't think I, therefore, have sufficient information to suggest that created an unfair relationship.

Ultimately, I don't think HSBC were unreasonable to reject the claims Mr G made to them and I'm not expecting to ask them to take any action.

My provisional decision

For the reasons I've given above, I'm not expecting to uphold this complaint.

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.

Neither party provided any further evidence or comments for me to consider. I've not, therefore, been provided with any additional information that would lead me to change my provisional decision. That provisional decision now becomes my final decision on this complaint.

My final decision

For the reasons I've given above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 8 March 2024.

Phillip McMahon
Ombudsman