

The complaint

Mr A complains about the sale of a timeshare. He says that Mitsubishi HC Capital UK Plc (who I'll call Mitsubishi) financed the purchase and that he therefore has claims against it.

Mr A has brought his complaint through a representative, so references to his submissions and arguments include those made on his behalf.

What happened

I processed a provisional decision on this complaint earlier this year. An extract from that provisional decision is set out below.

On 19 February 2020 Mr A upgraded his timeshare membership with a company I will call "C". The purchase was funded through a fixed sum loan with Hitachi (UK) PLC who are now Mitsubishi HC Capital UK Plc.

Mr A complained to Mitsubishi in August 2022. His claim was detailed but in essence he said he had a claim under sections 75 and 140A of the Consumer Credit Act 1974 (CCA) as the agreement had been misrepresented to him and there had been an unfair relationship. He also said that Mitsubishi hadn't performed adequate checks to ensure that the agreement was affordable for him.

Mitsubishi didn't uphold Mr A's complaint, so he escalated it to this Service.

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

Mr A didn't agree and, in particular, he provided financial information from around the time of sale that he said demonstrated he and his wife didn't have sufficient funds available to be able to sustainably afford the finance that was provided. Mr A asked for a decision by an ombudsman.

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 his 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.

The claim under the CCA

When something goes wrong and the payment was made with a fixed sum loan, as was 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.

From what I can see, all the necessary criteria for a claim to be made under section 75 have been met.

Section 56 of the CCA is relevant in the context of section 140A of the CCA that Mr A also relies on, 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 A and the lender.

It's not for me to decide the outcome of a legal claim Mr A 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 Mr A's claims.

The claim under section 75 of the CCA

Misrepresentation is, in very broad terms, a statement of law or of fact, made by one party to a contract to the other, which is untrue, and which materially influenced the other party to enter into the contract.

Mr A says the agreement was misrepresented to him as an investment and that he was promised his share of the property would increase in value. He also says he was promised he could sell it back, and that he would have availability anytime of the year. While I understand Mr A asserts otherwise I don't think his testimony alone is sufficient to persuade me the misrepresentations he claims were made, had been. Our experience with other, similar agreements, where more comprehensive documentation has been provided, suggests those representations wouldn't have been made.

Mr A has provided a copy of a training manual to support his claim that the agreement was misrepresented to him. I'm not sure of the provenance of that manual (and I make no finding about that) but, regardless, the manual doesn't relate to the type of timeshare Mr A purchased and is, therefore, not relevant to his claim.

I don't, therefore, think Mitsubishi were unreasonable to reject Mr A's section 75 claim.

Broker authorisation

Mr A argues that C wasn't authorised by the Financial Conduct Authority to arrange the credit agreement on Mitsubishi's behalf, and that their agents were self-employed and not qualified to do so. He says this breached the General Prohibition (section 19 of the Financial Services and Markets Act (2000)).

However, our records indicate that C was authorised at the time of sale. C have explained

that the agent who brokered the agreement was fully trained to do so, and I don't think I have evidence that there had, therefore, been a breach of the relevant regulations. So, I don't uphold this part of Mr A's complaint.

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 A's representatives say that a termination provision in Mr A's timeshare agreement meant he would forfeit the entire purchase price if he missed payments. They referred to the case of Link Financial v Wilson [2014] which they said showed a court agreed that a similar foreclosure clause to the one in Mr A's agreement, gave rise to an unfair relationship. I've not seen that Mr A experienced any loss as a result of that clause and I am not persuaded that the mere existence of a similar foreclosure term in Mr A's agreement, when it wasn't operated unfairly, would likely lead a court to find the debtor-creditor relationship was unfair on this occasion.

Mr A says that he was offered a special one off, time limited, price to accept the agreement and that was an aggressive sales practice. I've not seen any supportive evidence to suggest that was the case and I don't, therefore, think Mitsubishi were unreasonable to reject that complaint point.

Overall, I don't think Mitsubishi were wrong to reject the claim under s140A.

Was the loan irresponsible?

Mr A says that Mitsubishi was in breach of its obligations to carry out an adequate credit assessment to determine whether he could afford to repay the loan.

However, when considering a complaint about unaffordable lending, a large consideration is whether the borrowing was likely to prove unaffordable in practice and whether the complainant has actually lost out due to any failings on the part of the lender. So even if I was persuaded that the lender did not do appropriate checks (and I make no such finding), for me to say it needed to do something to put things right, I would need to see that the credit granted by them was likely to be unaffordable and that Mr A suffered a loss as a result.

Mr A has provided a breakdown of his, and his wife's, income, and expenditure on or around the time of sale. He's supported that with proof of earnings.

I've considered that information and I've thought about what could fairly be considered essential expenditure. His calculation shows travel expenses, arrears payments, further education, charity payments, and quite significant clothing costs that I think, in part, are likely to overstate his essential outgoings. I've not seen anything that, for me, would suggest that his committed essential expenditure, combined with his existing credit commitments left him with insufficient funds to sustainably afford repayments towards his finance agreement with Mitsubishi.

I am not, therefore, persuaded that Mitsubishi were unreasonable to reject that element of Mr A's complaint.

My provisional decision

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

Further comments and/or evidence

Mr A didn't agree with my provisional decision but provided no further comments or evidence for me to consider. Mitsubishi didn't respond.

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.

As I haven't been provided with any new information I have not found reason to change my provisional decision. That provisional decision, therefore, 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 A to accept or reject my decision before 15 March 2024.

Phillip McMahon
Ombudsman