

The complaint

Mrs L's complaint is, in essence, that Mitsubishi HC Capital UK Plc, who were Hitachi Capital (UK) Plc, and who I'll refer to as Mitsubishi acted unfairly and unreasonably by (1) participating in an unfair credit relationship with them under Section 140A of the Consumer Credit Act 1974 (the 'CCA') and (2) deciding against paying claims under Section 75 of the CCA.

Mrs L has brought her complaint through a representative, so references to her submissions and arguments include those made on her behalf.

What happened

I issued my provisional decision on this complaint in April 2024. An extract from that provisional decision is set out below.

In December 2010 Mrs L purchased a trial timeshare membership with a company I will call "C". She financed £2,400 of the £3,995 purchase price, through a fixed sum loan with Mitsubishi. In April 2011 she traded in her trial membership for full membership of C's Vacation Club. That gave her points each year to trade for accommodation at various Resorts within the Vacation Club. The Vacation Club membership cost £15,990, Mrs L received £3,995 for her trade in and financed the balance through a further fixed sum loan with Mitsubishi. In December 2011 Mrs L purchased Fractional Property Owners Club membership with C but that agreement was financed by another company and is not, therefore, the subject of this complaint.

Mrs L complained to Mitsubishi in April 2016 about:

- 1. Misrepresentations by the Supplier at the Time of Sale and a breach of contract, giving her claims under Section 75 of the CCA.*
- 2. Mitsubishi's participation in an unfair credit relationship under the credit agreements and related Purchase Agreements for the purposes of Section 140A of the CCA.*
- 3. The decision to lend by Mitsubishi – which she thought was irresponsible.*

Mitsubishi didn't think there was any merit in Mrs L's complaint and neither did our investigator.

Mrs L didn't agree. Her representatives said it was clear that the Fractional timeshare had been misrepresented to her as an investment. They said we should, therefore, have considered the outcome of the judicial review in R (on the application of Shawbrook Bank Ltd) v Financial Ombudsman Service Ltd and R (on the application of Clydesdale Financial Services Ltd (t/a Barclays Partner Finance)) v Financial Ombudsman Service [2023] EWHC 1069 (Admin) (Shawbrook & BPF v FOS). They 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.

Having done that, I'm not currently inclined 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 law and regulations and 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've kept in mind all of the points that have been made when I set out my decision.

Mrs L has suggested that the Purchase Agreements, or at least one of them, were for Fractional products. It seems that the purchase she made in December 2011 was for entry into C's Fractional Property Owners Club, but that purchase wasn't funded by Mitsubishi. The purchases funded by Mitsubishi were not Fractional products and did not entitle Mrs L to any share in the proceeds of future properties, nor did they market or sell any investment.

The Claim under the CCA

The CCA introduced a number of protections under Sections 56, 75 and 140A that give consumers (like Mrs L) a right of recourse against lenders (like Mitsubishi) that provide the finance for the acquisition of goods or services from suppliers like C.

And as Mrs L's complaint concerns misrepresentations and a breach of contract by the Supplier under Section 75 of the CCA and a credit relationship with Mitsubishi that she says was unfair to her under Section 140A, I'll now deal with each aspect of her complaint in turn.

Mrs L's Complaint about Mitsubishi's Handling of her Section 75 Claim

Misrepresentation is, in very broad terms, a statement of law or of existing 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.

Mrs L says she was induced into the Purchase Agreement on the back of a misrepresentation by the Supplier at the time of sale because the product wasn't worth what she paid. Her letter of complaint explicitly refers to her purchase in December 2011 that she says was worth half as much. That wasn't a purchase that was funded by Mitsubishi and isn't, therefore, something I can consider here. With regard to the two agreements that were part funded by Mitsubishi I can't see there is any information to corroborate what Mrs L was told about the value of the products she bought, and I note that the Membership Declaration for the trial membership explains that "We understand that ("C") aims to provide personal service to our members and its prices will be comparable to but not necessarily cheaper than other providers of the same services". I don't think I have sufficient information to suggest the Agreements Mrs L entered into were misrepresented to her on the basis alleged.

Mrs L also said that Mitsubishi had been unreasonable not to uphold her section 75 claim because the Agreements were Long Term Holiday Products as defined by The Timeshare, Holiday Products, Resale and Exchange Contracts Regulations (2010) and that Regulation 26 required payments to be made in yearly instalments and not in one lump sum as she had been asked to pay. But the Agreements weren't Long Term Holiday Products, they were Timeshare Contracts under which Mrs L acquired the right to use overnight accommodation for more than one period of occupation. I don't think Mitsubishi, therefore, did anything wrong when it rejected the claim on that basis.

Mrs L's Complaint about Mitsubishi's Participation in an Unfair Credit Relationship

I've explained above why I'm not persuaded that the Purchase Agreements entered into by Mrs L and funded by Mitsubishi, made for successful claims under Section 75 of the CCA. But, as Mrs L has a number of other concerns, I've considered those in this part of my decision.

I don't think the fact that Mitsubishi might have paid C commission was incompatible with its role in the transaction or amounted to unfairness. C wasn't acting as an agent of Mrs L but as the supplier of contractual rights she obtained under the Purchase Agreements. And, in relation to the loans they financed, based on what I've seen so far, it doesn't look like it was C's role to make an impartial or disinterested recommendation or to give Mrs L advice or information on that basis. What's more, as I understand it, the amounts of commission paid by Mitsubishi wasn't likely to be high and on that basis, I'm not persuaded that any non-disclosure and payment of commission rendered Mrs L's credit relationship with Mitsubishi unfair for the purposes of Section 140A given the circumstances of this complaint.

Mrs L has suggested that C should have offered other credit providers. I don't think it was C's role to provide recommendations and I think Mrs L understood she could finance her purchases via other means as I can see she paid some of the trial membership using a credit card and some of her vacation Club Membership using her trade in. But, even if it's right to suggest that Mrs L should have been presented with a range of lenders to choose from, there's little to nothing to demonstrate that she has suffered a financial loss because she entered into a credit agreement with Mitsubishi rather than another lender. And, for that reason, I'm not persuaded that created or contributed to an unfair relationship between her and Mitsubishi.

Mrs L says that she was unduly pressured to enter into the Purchase Agreements and the related Credit Agreements. She says that was in breach of the Finance and Leasing Association's Lending Code. Her representative has explained that presentations were arduous and pressured but I can't see that Mrs L expanded on that in her testimony to explain what that pressure was. I don't think I've been provided with sufficient information to suggest Mrs L didn't understand she didn't have to say yes to the agreement or that she didn't understand she couldn't walk away without entering into it. She was provided with a 14 day cooling off period and I think that was sufficient time for her to ask for clarification, reflect and if necessary, withdraw from the agreement and the loan.

Was the loan irresponsible?

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

However, even if Mitsubishi didn't complete adequate affordability checks (and I make no finding about that) 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, for me to say Mitsubishi 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 Mrs L suffered a loss as a result. As there's little evidence that she would have found, nor found, it difficult to repay what she was lent by Mitsubishi, I'm not persuaded the agreement was unaffordable for her and I am not, therefore, persuaded that Mitsubishi were unreasonable to reject that element of Mrs L's complaint.

My provisional decision

I'm not expecting to uphold this complaint.

The parties' responses to my provisional decision

Mitsubishi didn't respond but Mrs L's representatives, on her behalf, did. They said:

"[...] the trial membership was purchased on 04/11/2011 the trial membership entitled our client to 5 weeks vacation with the seller over a period of 3 years. We confirm our client on 21-12-2011 some 4 weeks later was encouraged to enter into a fractional membership (Claim was upheld and client re-imbursed documents attached), as such our client received no benefit for the trial membership and the claim should be upheld. If it were not for the actions of the seller our client would have received the benefit of 5 vacations however, in light of the upgrade to fractional this benefit was not received."

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.

The fractional property ownership was not purchased through finance provided by Mitsubishi and they have no liability for any claim that may arise from it. As the agreement Mrs L had, that was financed by Mitsubishi, was traded in, it would seem that it offset the value of the fractional property ownership. I'm not persuaded that Mrs L didn't receive any benefit from it. Her rights to use the trial membership were not affected and for the reasons I've already given, I don't think there was a misrepresentation, an unfair credit relationship or an irresponsible lending decision. I'm not, therefore, minded to change my provisional 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 Mrs L to accept or reject my decision before 30 October 2024.

Phillip McMahon
Ombudsman