

The complaint

Mr A's complaint is, in essence, that Mitsubishi HC Capital UK PLC ("Mitsubishi") acted unfairly and unreasonably by deciding against paying a claim under Section 75 of the Consumer Credit Act 1974 (the "CCA").

What happened

In June 2018 (the "Time of Sale"), Mr A (together with another party) agreed to purchase a timeshare product (the "Timeshare") from a timeshare provider (the "Supplier") for an agreed price of £4,395. The purchase was funded under a fixed sum loan agreement (the "Credit Agreement") with Mitsubishi over 12 months in Mr A's sole name. All amounts owed under the Credit Agreement were repaid by June 2019.

In or around October 2023, Mr A submitted a complaint to Mitsubishi which highlighted various concerns about the Timeshare he'd purchased. Mr A's complaint included allegations that the Supplier had misrepresented the Timeshare to him at the Time of Sale. In particular by telling him that the Timeshare:

- would provide worldwide travel with an exchange programme;
- would allow access to minimum four star accommodation; and
- resorts and accommodation were exclusive to members only.

Despite this, Mr A said that:

- accommodation availability was not as promised resulting in an inability to use all of the allocation included in the Timeshare;
- exclusive resorts were available to be booked by non-members;
- he was unable to book to revisit previously visited resorts; and
- destinations were restricted with a number of resorts closing down.

In response, Mitsubishi rejected Mr A's complaint on every ground. So, he referred matters to this service for consideration. Having considered all the evidence and information available, one of this service's investigators didn't think Mr A's complaint should be upheld.

Mr A didn't agree with our investigator's findings and asked for his complaint to be passed to an ombudsman to consider further. So, Mr A's complaint was passed to me.

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.

Relevant consideration

When considering what's fair and reasonable, DISP¹ 3.6.4R of the FCA Handbook means I'm required to take into account; relevant law and regulations, relevant regulatory rules,

¹ Dispute Resolution: The Complaints sourcebook (DISP)

guidance and standards and codes of practice; and, where appropriate, what I consider was good industry practice at the relevant time.

Where evidence is incomplete, inconclusive, incongruent or contradictory, my decision is made on the balance of probabilities – which, in other words, means I've based it 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. In doing so, my role isn't necessarily to address in my decision every single point that's been made. And for that reason, I'm only going to refer to what I believe are the most salient points having considered everything that's been said and provided.

The Financial Ombudsman Service's Substantive Jurisdiction

The subject matter of Mr A's complaint must fall within the definition of a "complaint"; and this service only has the jurisdiction to consider "complaints" (as defined in the Glossary of the FCA's Handbook of rules and guidance) about the provision of, or failure to provide, a financial service, claims management service or redress determination. Expressions of dissatisfaction about other matters fall outside this service's jurisdiction.

What's more, this service can only consider complaints under its Compulsory Jurisdiction that concern an "activity" as set out in Rule 2.3.1 in DISP – which, insofar as it's relevant here, means that this complaint must relate to an act or omission of a respondent firm (or a person for whom the respondent firm is responsible²) in lending money³ or carrying out a regulated activity or any ancillary activity carried out by the respondent firm in connection with those activities.

Mr A's complaint to Mitsubishi raises allegations of misrepresentation by the Supplier at the Time of Sale. Section 75 of the CCA ("S75") creates a financial liability that the creditor is bound to pay. Liability under S75 isn't based upon anything the lender does wrong. Rather upon misrepresentations and / or breaches of contract by the Supplier. S75 imposes on the lender a "like claim" to that which the borrower enjoys against the supplier. If the lender is notified of a S75 claim which is found to be valid, it should pay its liability. And if it fails or refuses to do so, that can give rise to a complaint to this service.

Mr A paid for the Timeshare under the Credit Agreement with Mitsubishi. So, it isn't in dispute that S75 applies here. This means Mr A is afforded the protection offered to borrowers like him under those provisions.

When a complaint is referred to this service on the back of an unsuccessful S75 claim, the act or omission that engages this service's jurisdiction is the creditor's refusal to accept or pay the debtor's claim. This is distinct from anything that occurred before the claim was made such as the supplier's alleged misrepresentation(s) and/or breach(es) of contract.

Mr A's complaint is therefore about Mitsubishi not upholding his complaint about the Supplier's alleged misrepresentations, essentially declining a claim under S75. So, this is an expression of dissatisfaction about the provision of a financial service. And as the Credit Agreement was a "regulated credit agreement" for the purposes of Article 60(B)(1) in Part 2 of the Financial Services and Market Act 2000 (Regulated Activities) Order 2001 (the 'Regulated Activities Order'), those concerns are also clearly about a regulated activity. So, this service does have the jurisdiction to consider Mr A's complaint.

I also notice that the Timeshare was purchased in joint names with another party. However, as the Credit Agreement is in Mr A's sole name, only he is an eligible claimant and, as a consequence, the only eligible complainant here.

What did Mr A purchase.

² See DISP 2.3.3 G

³ This excludes restricted credit unless the lending amounted to a credit-related regulated activity.

I've seen a document from the Time of Sale headed "Trial Membership Agreement" (the "TM Agreement"). It states that;

"The Applicant(s) hereby apply to become a Trial Member of the Club by purchasing the rights to reserve up to the number of holiday weeks specified below within a period of 36 months from the date of signing this Agreement, subject to (a) the terms and conditions listed on the reverse of this Agreement, (b) the attached Information Statement and Trial Membership Regulations in the Schedule, (c) the Rules of Occupation of the Club and (d) any ancillary documents as amended from time to time (copies of which have been provided to the Applicant(s) [...]"

The TM Agreement specifies five weeks to be taken by June 2021 with a termination date of 9 June 2021. Mr A has signed the TM agreement.

Note 2 on Page 2 of the TM Agreement confirms that the Timeshare *"enable Members to try out the Club and take holidays in a range of holiday locations with a choice of accommodation"*.

The documentation from the Time of Sale also includes a *"Members Declaration"* signed by Mr A with each note individually initialled.

Note 3 includes, *"Unit sizes vary from resort to resort and are subject to availability"*.

Note 4 says, *"We understand that we will only be entitled to occupation if weeks in Apartments and at Resorts available to our Trial Membership, accommodation varies from resort to resort, the allocation is subject to availability and demand"*.

Mr A has also provided copies of marketing material he says was provided at the Time of Sale. This includes a document that lists Trial Membership benefits. They include:

- *"5 weeks of luxury accommodation, in a choice of 50 resorts, to use any time within a 36-month period"*.
- *"Access to Interval International exchange network"*.

Also included is a *"Frequently Asked Questions"* document which refers to the Supplier's portfolio as *"[The Supplier's] World"* which *"has mixed use resorts in England, Scotland, Austria, mainland Spain, Tenerife, Turkey and America"*. It refers to their *"official exchange partner [with] more than 3,000 resorts in over 80 nations worldwide"*.

Under Section III. *"A FEW TIPS"*, it says *"Reservation requests can be made from 12 months to 2 days prior to check-in date. All accommodation is subject to availability..."*.

The Information Statement, which Mr A acknowledged he'd received (by signing the TM Agreement), starts by confirming, *"Should this document contain anything which conflicts with any information you were given prior to purchasing your Membership then the information contained herein will prevail"*.

Part 1 of the *"Standard Information Form"* refers to *"...occupancy rights (subject to availability)"*.

Part 3, Note 1 states, *"...reservation requests in Trial Membership are subject to availability and seasonal demands. It should be noted that [the Timeshare] tries to cater for Members changing travel patterns and therefore an element of [the accommodation available] will change over time. No assurances can be given that a specific resort will remain within [the Timeshare] for the lifetime of a membership or for the entire duration of the [Suppliers membership scheme]"*.

Part 3, Note 8 says, *"All reservations are dealt with on a first come first served basis"*.

The Standard Information Form includes a document headed *"Regulations 2018"* serving as the Terms and conditions of use of Trial Membership. It says:

- *“reservations for holidays can be made up to 12 months in advance...”;*
- *“All space is subject to availability. Demand in school holidays is considerable and therefore reservation requests should be made as far in advance as possible”;*

So, in simple terms, it appears Mr A purchased a trial membership product providing access to the Supplier’s portfolio of accommodation and resorts limited to 5 weeks in a three-year period ending June 2021 (subject to availability).

The claim for misrepresentation under S75

For me to conclude there was a misrepresentation by the Supplier in the ways that have been alleged, generally speaking, I would need to be satisfied, based on the available evidence, that the Supplier made false statements of fact when selling the Timeshare. In other words, that they told Mr A something that wasn’t true in relation to one or more of the points raised. I would also need to be satisfied that the misrepresentations were material in inducing Mr A to enter the contract. This means I would need to be persuaded that he reasonably relied on those alleged false statements when deciding to buy the Timeshare

From the information available, I can’t be certain about what Mr A was specifically told (or not told) about the benefits of the Timeshare he purchased. It was, however, indicated that he was told these things. So, I’ve thought about that alongside the documentary evidence available from the Time of Sale.

Having done that, I haven’t found anything to suggest that the Supplier provided any guarantees of availability in relation to specific resorts, locations and accommodation throughout the agreed term of his Timeshare. Rather, I think it was made repeatedly clear that all booking were subject to availability and allocated on a first come, first served basis. So, I can understand why Mr A may not always have been able to secure bookings at his preferred destination(s). But I can’t reasonably conclude that would constitute an actionable misrepresentation or breach of contract that Mitsubishi could ultimately be held liable for under S75.

Further, I think it was clear that the available accommodation and resorts could vary throughout the life of Mr A’s trial membership. Again, it doesn’t appear that any guarantees were given to suggest that resorts and / or accommodation would remain available as part of the Supplier’s portfolio. I think the documentation makes it clear they could change.

Mr A also suggest that the Supplier sold the Timeshare as something that would be exclusive to members. Mr A appears to have interpreted that to mean that only members would be able to book at those resorts. However, I don’t agree. The documentation shows that Mr A had access to various exclusive benefits. However, I haven’t found anything to support Mr A’s interpretation. From my knowledge of such Timeshares, the resorts were available to members and non-members alike, albeit with (limited) accommodation within each resort designated for use my members only and subject to availability. So, I can appreciate why non-members might be able to book accommodation at resorts included within the Supplier’s portfolio.

I’ve also found nothing within the documentation which suggest that the Supplier told Mr A that he would be entitled to 4-star accommodation. In fact, the *“Frequently Asked Questions”* document specifically addresses the question of *“Resort Classification”*, clearly explaining how the Supplier’s accommodation is rated.

Extension of the Trial Membership

It appears that soon after agreeing to purchase the Timeshare, Mr A's partner referred back to the supplier with concerns about the expiry date included within the TM Agreement. As a consequence, it appears the Supplier agreed to extend the Timeshare for a further three months – expiring 9 September 2021.

Furthermore, due to the impact of the global pandemic in 2020 and 2021, the Supplier further extended Mr A's Timeshare membership resulting in a revised expiry of 9 December 2023. So, it seems the total membership period provided was actually 5 ½ years, during which Mr A could access his benefits. These not only included access to overseas locations, but also resorts within the UK. The Suppliers records show that Mr A didn't request any accommodation under the Timeshare until June 2022 – 12 months after the original expiry date.

Mr A's complaint includes an allegation that an exchange programme (offering access to worldwide destinations) included within his original Timeshare was no longer available for him to use. However, this particular benefit was provided by another business and is addressed within Part 1 of the Standard Information Form. In particular, it says, the Supplier *"has signed an agreement with [the exchange programme provider] by virtue of which all new Trial Members are provided with a three years membership of their exchange Scheme... [The exchange provider] is an independently owned and operated service company. [The Supplier] is neither the agent for nor a joint venture with [the exchange programme provider]"*.

So, based upon what I've seen, I think the exchange programme was only available to Mr A for the original period of his Timeshare. The Supplier subsequently extended the term of his original Timeshare in recognition of the impact of the global pandemic. But the Supplier would have had no control over the availability of the exchange programme once the original expiry date of Mr A's Timeshare had passed. This wasn't something they provided themselves. So, I can't reasonably say that this constituted an actionable misrepresentation or contract breach that the Supplier (or Mitsubishi under S75) could be held liable for.

In responding to our investigator's findings. Mr A has referred to *"similar claims from customers of [the Supplier]"* together with a *"select committee investigation"*. My investigation is based upon the individual circumstances of Mr A's own experience, together with the evidence available from the Time of Sale. So, I don't think the findings in cases of other consumers or investigations help me in establishing what happened in Mr A's specific circumstances.

Summary and conclusion

I recognise and appreciate Mr A's strength of feeling here. But having carefully considered everything available, I can't reasonably conclude that there was an actionable misrepresentation or breach of contract such that Mitsubishi could ultimately be held liable for it under S75. I do realise Mr A will be very disappointed but, based upon my findings, I'm not persuaded that Mitsubishi's response to his complaint was unfair or unreasonable. So, I won't be asking them to do anything more here.

My final decision

For the reasons set out above, I don't uphold Mr A's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 29 October 2024.

Dave Morgan
Ombudsman

