

The Complaint

Mr G's complaint is, in essence, that Mitsubishi HC Capital UK Plc (the 'Lender') acted unfairly and unreasonably under the Consumer Credit Act 1974 (as amended) (the 'CCA') in relation to a loan taken to purchase a timeshare.

Background to the Complaint

Mr G purchased membership of a timeshare (the 'Fractional Club') from a timeshare provider (the 'Supplier') on 1 October 2012 (the 'Time of Sale'). He (and another – Mrs G) entered into an agreement with the Supplier to buy 2,241 Fractional Points (the 'Purchase Agreement'). The purchase price of those points was £32,190. But after trading in an existing timeshare, Mr and Mrs G paid the Supplier £9,950 (which included the first year's annual management charge of £1,497).

Fractional Club membership was asset backed – which means it gave Mr and Mrs G more than just holiday rights. It also included a share in the net sale proceeds of a property named on their Purchase Agreement (the 'Allocated Property') after their membership term ends.

Mr and Mrs G paid for their Fractional Club membership by taking finance of £9,950 from the Lender in Mr G's name (the 'Credit Agreement') – which is why this complaint is in his name only.

Mr G – using a professional representative (the 'PR') – wrote to the Lender on 6 September 2018 (the 'Letter of Complaint') to complain about his Fractional Club membership.

In the Letter of Complaint, Mr G said that he and Mrs G were told by the Supplier at the Time of Sale that the only way out of their existing timeshare was to purchase membership of the Fractional Club – which was untrue. He also said that he and Mrs G were finding it difficult to book holidays given the limited availability in light of the Supplier's decision to advertise its resorts more widely to those who were not members.

As a result of the above, Mr G said that he had claims against the Supplier, and therefore, under Section 75 of the CCA, he had like claims against the Lender, who, with the Supplier, is jointly and severally liable to him.

The Lender passed Mr G's complaint to the Supplier. It shared its thoughts on the matter on 20 September 2018. It said that Mr and Mrs G could have simply relinquished their existing timeshare and it questioned why they had gone on to upgrade their Fractional Club membership after the sale in question if the only reason they had made the purchase at the centre of this complaint was to get out of their existing timeshare. The Supplier also disputed the suggestion that Mr and Mrs G found it difficult to book holidays because it said that, by the time they had complained about Fractional Club membership, it had been suspended in August 2017 – which pre-dated the Supplier's decision to advertise more widely to those who were not members.

The Lender went on to deal with Mr G's concerns as a complaint and issued its final

response letter – rejecting them.

Mr G then referred the complaint to the Financial Ombudsman Service. It was assessed by an Investigator who, having considered the information on file, rejected the complaint on the basis that Mr G's Section 75 claim for misrepresentation was not valid because the cash price of his Fractional Club membership was more than £30,000 – which, in his view, meant that it failed to meet one of the pre-conditions to making such a claim.

The PR, on Mr G's behalf, disagreed with the Investigator's assessment and asked for an Ombudsman's decision – which is why it was passed to me.

It is not necessary to set out, in detail, the reasons why an informal resolution could not be reached following the Investigator's assessment. They were part of a new complaint about the credit relationship between Mr G and the Lender being unfair to him for the purposes of Section 140A of the CCA. And, in summary, the reasons included:

1. Mr and Mrs G were held in a high-pressured sales meeting for hours.
2. Mr and Mrs G were not sold a timeshare but an attractive investment because their share in the Allocated Property would make them a healthy profit.
3. Mr and Mrs G were told by the Supplier at the Time of Sale that their annual management charges would always be around £900.

I issued a Provisional Decision ('PD') rejecting the complaint. I was not persuaded that the Lender's handling of Mr G's Section 75 claims for misrepresentation and, in my view, breach of contract was unfair or unreasonable. I also made the point that, generally speaking, respondent firms, like the Lender, must be given the opportunity to consider complaints before the Financial Ombudsman Service does. And as Mr G's new complaint about an unfair credit relationship under Section 140A of the CCA was not one that the Lender had had the opportunity to consider and respond to, it needed to be given that opportunity first.

Neither the Lender nor the PR (on Mr G's behalf) had anything new to add to the complaint in response to my PD. So, the complaint was passed back to me for a Final Decision.

My Findings

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 still do not think this complaint should be upheld.

But before I explain why, I want to repeat what I said in my PD about this decision only being concerned with Mr G's complaint about the Lender's handling of his Section 75 claims. As I have said before, generally speaking, respondent firms, like the Lender, must be given the opportunity to consider complaints before the Financial Ombudsman Service does. And as I cannot see that Mr G's complaint about an unfair credit relationship under Section 140A of the CCA was put to the Lender by him or the PR on his behalf for the Lender to consider, this Final Decision is only concerned with his complaint about the Lender's handling of his Section 75 claims

Section 75 of the CCA: the Supplier's Alleged Misrepresentation(s) at the Time of Sale

The CCA introduced a regime of connected lender liability under section 75 that affords consumers (“debtors”) a right of recourse against lenders that provide the finance for the acquisition of goods or services from third-party merchants (“suppliers”) in the event that there is an actionable misrepresentation and/or breach of contract by the supplier.

In short, a claim against the Lender under Section 75 essentially mirrors the claim Mr G could make against the Supplier.

However, certain conditions must be met if the protection afforded to consumers is engaged. And the condition most relevant to this complaint relates to the cash price of the purchase, which Section 75(3)(b) says must be more than £100 and no more than £30,000. As the cash price of Mr and Mrs G’s purchase was £32,190, it does not satisfy the condition in question. And, for that reason, I cannot see why Section 75 applies to Mr G’s claim for alleged misrepresentation(s) by the Supplier at the Time of Sale.

Furthermore, even if I am wrong about that, I am not persuaded that the Supplier is likely to have misrepresented Fractional Club membership to Mr and Mrs G at the Time of Sale anyway. After all, the Letter of Complaint and responses to the Investigator’s assessment give little colour and context to the allegation that they were told by the Supplier that the only way out of their existing timeshare was Fractional Club membership. There is nothing persuasive, for instance, about what was said, by who and in what circumstances. And, in addition to that, I too find it difficult to understand why Mr and Mrs G went on to upgrade their Fractional Club membership after the Time of Sale (thus prolonging their membership it would seem) if the only reason they went ahead with their purchase at that time was to get out of their existing timeshare.

So, with all of that being the case, I do not think the Lender needs to do anything to put things right insofar as this complaint concerns its handling of this particular Section 75 claim.

Section 75 of the CCA: the Supplier’s Alleged Breach of Contract

It was alleged in the Letter of Complaint that Mr and Mrs G found it difficult to holiday using their Fractional Club membership – which, on my reading of the complaint, suggests that they think that the Supplier was not living up to its end of the bargain, thus potentially breaching the Purchase Agreement.

However, having already summarised how Section 75 of the CCA works, I will repeat the point that Section 75 does not apply to Mr G’s claim for a breach of contract by the Supplier given the cash price of his and Mrs G’s Fractional Club membership.

If the cost of the goods or services exceeds £30,000, there is protection against alleged breaches of contract under Section 75A of the CCA – which introduced a higher upper limit on claims. Under Section 75A, the finance must be linked to goods or services by a debtor-creditor-supplier agreement (like the Credit Agreement). And, in addition, the debtor(s) has/have to show one of the following:

1. that the supplier cannot be traced;
2. that he/she/they has/have contacted the supplier but the supplier has not responded;
3. that the supplier is insolvent; or
4. that he/she/they has/have taken reasonable steps to pursue his/her/their claim against the supplier but has not obtained satisfaction for his/her/their claim.

Based on what I have seen, I am not persuaded that Mr G (or the PR on his behalf) has satisfied any of the conditions above. And, in any event, the assertion in the

Letter of Complaint that Mr and Mrs G were, at the time of that letter, finding it difficult to book holidays seems to me to be misconceived given what the Supplier says about their Fractional Club membership being suspended in August 2017.

What is more, even if I am wrong about that, like any holiday accommodation, availability was not unlimited – given, for instance, the distinct possibility that there would be higher demand at peak times. Some of the sales paperwork signed by Mr and Mrs G states that the availability of holidays was/is subject to demand. It also looks like they are likely to have made use of their Fractional Points to holiday before their Fractional Club membership was suspended. So, while it is possible that they may not have been able to take certain holidays, I have not seen enough to persuade me that the Supplier breached the terms of the Purchase Agreement even if it could be said that Section 75A applies to Mr G's claim.

Overall, therefore, I do not think the Lender needs to do anything to put things right insofar as this complaint also concerns its handling of this Section 75 claim.

My Final Decision

For the reasons set out 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 January 2025.

Morgan Rees
Ombudsman