DRN-5164606

## The complaint

Mr B, who is represented by a professional representative ('PR') complains that Mitsubishi HC Capital UK PLC ('Mitsubishi') rejected his claims under sections 75 and 140A Consumer Credit Act ('CCA') in respect of several holiday product purchases.

## What happened

In November 2019 Mr B and his partner purchased a timeshare product from a company I will call C. It cost £16,285 which was funded by a loan in Mr B's name provided by Mitsubishi. This means Mr B is the eligible complainant and for the sake of simplicity I will refer to him as the sole purchaser in this decision.

In March 2024 PR submitted a letter of claim to Mitsubishi on Mr B's behalf. The claims are well known to both parties so I will give a brief summary here. PR said:

- Mr B had been subjected to pressure at the time of sale and had not been given sufficient time to consider the agreement.
- He was not given details of the finances Mitsubishi had granted including cancelation rights.
- He had been misled about the management fees.
- He had been told he would be able to buy an apartment in due course to earn rental income.
- He had been told he could have up to 12 weeks holidays a year for up to 15 years.
- He had been unable to end his contract early as he owed maintenance fees.

PR referenced the decision *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*'). It said the product had been mis sold and asked that Mitsubishi return the money loaned to Mr B.

Mitsubishi rejected the claim. It said the sales process was lengthy due to the nature of the product being sold. It also noted Mr B had a 14-day withdrawal option. He had been provided with all the necessary information prior to signing. He had been given an information statement which amongst other things, set out details of the management charges.

In July 2024 PR brought a complaint to this service reiterating the points it had made to Mitsubishi. It also provided a witness statement from Mr B. It was considered by one of our investigators who didn't recommend it be upheld. He noted that the product was not a fractional timeshare, but was a points-based product. He wasn't persuaded that there had been an unfair relationship as required to bring section140 into play. Furthermore, he didn't

consider there had been clear evidence of misrepresentation.

PR didn't agree and asked that the matter be considered by an ombudsman. No further information or arguments were provided.

**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.

When doing that, I'm required by DISP 3.6.4R of the FCA's Handbook to take into account the:

"(1) relevant:

(a) law and regulations;

(b) regulators' rules, guidance and standards;

(c) codes of practice; and

(2) ([when] appropriate) what [I consider] to have been good industry practice at the relevant time."

And when evidence is incomplete, inconclusive, incongruent or contradictory, I've made my decision 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 available evidence and the wider circumstances.

Having read and considered all the available evidence and arguments, I don't think this complaint should be upheld. I will explain why. Firstly I would reiterate the point made by our investigator that the timeshare purchased by Mr B was not a fractional one and I will ignore any arguments relating to fractional products.

S.75 Misrepresentation

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 Mitsubishi under section 75 essentially mirrors the claim Mr B could make against C.

Certain conditions must be met if the protection afforded to consumers is engaged, including, for instance, the cash price of the purchase and the nature of the arrangements between the parties involved in the transaction. Mitsubishi does not dispute that the relevant conditions are met in this complaint. And as I'm satisfied that Section 75 applies, if I find that C is liable for having misrepresented something to Mr B at the Time of Sale, Mitsubishi is also liable.

PR has not set out with any clarity what is alleged to have been misrepresented. In Mr B's statement he says he was told about a wide range of available destinations, but nothing has been said to show that this was not true. He also suggests he was told that he could buy an apartment at some point, but again no details have been provided and it is difficult for me to

conclude that this was a misrepresentation. PR has said that Mr B felt he had made the right decision at the time of sale, but later had a change of circumstances which made paying the loan and maintenance fees difficult. While I sympathise with that, I cannot see that it supports the claim of misrepresentation.

Section 75 Breach of Contract

I've already summarised how section 75 of the CCA works and why it gives Mr B a right of recourse against Mitsubishi. So, it isn't necessary to repeat that here other than to say that, if I find that C is liable for having breached the Purchase Agreement, Mitsubishi is also liable.

I do not consider the reasons put forward by Mr B amount to a breach of contract. He has said he was unable to cancel his contract due to not being up to date with his maintenance fees. That is in line with the terms of the contract and so I cannot see that it constitutes a breach.

Nor does the claim relating to the number of holidays he could take. I have not been informed by either party what holidays Mr B did take, but I can see from the contract that he acquired points which would allow him to take holidays subject to availability and I have seen nothing to suggest this was incorrect.

Section140 A

Only a court has the power to decide whether the relationships between Mr B and Mitsubishi were unfair for the purpose of section 140A. But, as it's relevant law, I do have to consider it if it applies to the credit agreement – which it does.

However, as a claim under section 140A is "an action to recover any sum recoverable by virtue of any enactment" under Section 9 of the LA, I've considered that provision here.

It was held in Patel v Patel [2009] EWHC 3264 (QB) ('Patel v Patel') that the time for limitation purposes ran from the date the credit agreement ended if it wasn't in place at the time the claim was made. The limitation period is six years and the claim was made within this period.

However, I'm not persuaded that Mr B could be said to have a cause of action in negligence against Mitsubishi anyway.

Their alleged loss isn't related to damage to property or to him personally, which must mean it's purely financial. And that type of loss isn't usually recoverable in a claim of negligence unless there was some responsibility on the allegedly negligent party to protect a claimant against that type of harm.

Yet I've seen little or nothing to persuade me that Mitsubishi such responsibility – whether willingly or unwillingly.

As I was not present at the sales meeting I cannot say what was actually said by the sales representative. It is known for these products to be sold as investments in future holidays which is not the same as financial investments.

Mr B says that he was pressured by C into purchasing the timeshare membership at the Time of Sale. I acknowledge that he may have felt weary after a sales process that went on for a long time. But he says little about what was said and/or done by C during his sales presentation that made him feel as if he had no choice but to purchase the membership when he simply did not want to. He was also given a 14-day cooling off period and he has

not provided a credible explanation for why he did not cancel his membership during that time.

And with all of that being the case, there is insufficient evidence to demonstrate that Mr B made the decision to purchase the membership because his ability to exercise that choice was significantly impaired by pressure from C.

It is clear from the submissions of everyone involved in this complaint that there was a lot of information passed between C and Mr B when he purchased the timeshare membership. But he and PR suggest that C failed to provide them with all of the information he needed to make an informed decision.

Failing to provide information or there being unfair terms are things that could have been breaches of the Timeshare Regulations or UTCCR.

One of the main aims of the Timeshare Regulations and the UTCCR was to enable consumers to understand the financial implications of their purchase so that they were/are put in the position to make an informed decision. And if a supplier's disclosure and/or the terms of a contract did not recognise and reflect that aim, and the consumer ultimately lost out or almost certainly stands to lose out from having entered into a contract whose financial implications they didn't fully understand at the time of contracting, that may lead to the Timeshare Regulations and the CRA being breached, and, potentially the credit agreement being found to be unfair under Section 140A of the CCA.

However, the Supreme Court made it clear in *Plevin* that it does not automatically follow that regulatory breaches create unfairness for the purposes of Section 140A of the CCA. The extent to which such mistakes render a credit relationship unfair must also be determined according to their impact on the complainant.

Given the facts and circumstances of this complaint, I am not persuaded that C's alleged breaches of the Timeshare Regulations, the CPUT Regulations and the CRA are likely to have prejudiced Mr B's purchasing decision at the Time of Sale and rendered his credit relationship with Mitsubishi unfair to him for the purposes of section 140A of the CCA.

Nor do I think that the decision in Shawbrook & BPF v FOS aids Mr B's case. That dealt with the purchase of fractional timeshare memberships and Mr B acquired a totally different type of timeshare membership.

Affordability

PR says that Mr B was not made fully aware of the finance he was taking out. He implies that no or insufficient checks were carried out at the time of sale and this means the lending was irresponsible. When considering a complaint about unaffordable lending, a large consideration is whether the complainant has actually lost out due to any failings on the part of the lender. So, if Mitsubishi 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 Mr B lost out as a result of its failings. I gather Mr B's circumstances changed, but that does not mean that at the time the loan was taken out Mitsubishi made any errors.

Conclusion

It is not for me to decide whether Mr B has a claim against C, or whether he might therefore have a "like claim" the Consumer Credit Act. Nor can I make orders under section 140A and section 140B of the same Act – by which a court can decide that a credit agreement creates an unfair relationship and make orders amending it.

However, for the reasons I've already given, I don't think Mitsubishi lent irresponsibly to Mr B or otherwise treated him unfairly in relation to this matter.

## My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 27 January 2025.

Ivor Graham
**Ombudsman**