

The complaint

Mr B complains that Mitsubishi HC Capital UK Plc trading as Hitachi Capital Consumer Finance (“HC”) acted unfairly when considering their responsibilities under the Consumer Credit Act 1974 (“the CCA”) in relation to a loan they provided to fund a timeshare product purchase.

What happened

In July 2012, Mr B met with his existing timeshare supplier who I’ll refer to as “C”. During that meeting, Mr B agreed to upgrade his existing timeshare product in exchange for membership of C’s Fractional Property Owners Club (the “FPOC”). In addition to trading in his existing membership, Mr B agreed to pay a further £11,299. This amount was funded using a Fixed Sum Loan (the “Finance agreement”) from HC in his sole name repayable over 180 months.

In October 2020, Mr B submitted a complaint to HC in relation to the product funded using the Finance agreement. And according to HC’s response to the complaint, Mr B said:

- the product he purchased was not as offered; and
- the loan was described as home improvements by C’s agent who signed the application form, rather than a timeshare.

HC didn’t uphold Mr B’s complaint. Having obtained the point-of-sale documentation from C, it included detailed information about FPOC membership. It also showed that Mr B could’ve cancelled the membership along with the Finance agreement within the 14-day cooling off period. HC also didn’t agree that the relevant documentation indicated that the loan was for home improvements rather than FPOC membership.

Mr B didn’t accept HC’s findings and referred his complaint to this service. In doing so, he said that, upon taking up the FPOC membership, he was unable to book the holidays he wanted, and the property specified within the FPOC agreement “*was basically worthless*”.

Mr B said that he only discovered these facts after the 14-day cooling off period. He also added that he’d been contacted by several solicitors who had advised him that “*these loans had been mis sold by [C] via [HC]*”.

One of this service’s investigators considered all the information and evidence available. Having done so, they thought Mr B’s concerns could be considered as a claim under section 75 of the CCA (“S75”). However, Mr B needed to have submitted such a claim to HC within six years under the relevant provisions of the Limitation Act 1980 (the “LA”). Because of that, our investigator thought Mr B’s claim had been submitted too late, such that it was fair and reasonable of HC to reject it.

Mr B didn’t accept our investigator’s findings. He said he first experienced problems with booking holidays using his FPOC membership following a holiday taken in May 2013. And it was at this point he raised his concerns with C. He accepts that his claim to HC was made after the six-year limitation period, but he believes he still has a valid claim, having previously complained to C within those six years. Our investigator wasn’t persuaded by that argument and didn’t change their view. So, Mr B asked that his complaint be referred to an ombudsman.

As a consequence, Mr B's complaint was passed to me to consider further. Having done that, whilst I reached a similar outcome to that of our investigator, I'd done so for different reasons. So, I issued a provisional decision on 5 June 2024 giving both sides the chance to respond before I reach my final decision.

My provisional decision was that I didn't think Mr B's complaint should be upheld. In it, I said:

Before I explain why, I want to make it clear that I've based my decision 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. When doing that, my role isn't to address every single point that's been made. So, I'm only going to refer to what I believe are the most salient points having considered everything that's been said and provided by both sides.

The CCA introduced certain protections that afforded consumers (like Mr B) a right of recourse against lenders (like HC) that provide the finance for the acquisition of goods or services (like FPOC membership) from suppliers (like C) – which is why the investigator considered Mr B's complaint with Section 75 of the CCA in mind – that being one of those provisions.

The concerns Mr B has about the sale of his FPOC membership only constitute a complaint that the Financial Ombudsman Service has the authority to consider if those concerns are considered with at least one of the provisions of the CCA in mind - which is what I've done in this decision.

Mr B suggests that the FPOC membership wasn't as advertised. But he hasn't given any specific reasons for why that was the case. I can't see that he's explained what was advertised or presented to him together with any evidence to support that. Furthermore, Mr B hasn't explained how what he actually received under his FPOC membership differs from what C told him he would receive. And he hasn't provided any evidence to support any alleged differences.

Upon referring his complaint to this service, Mr B said he wasn't able to book his preferred choices in advance. But again, I haven't seen any evidence to support that allegation. And as far as I'm aware, bookings made using the points Mr B received under his FPOC membership were always subject to availability and confirmed on a first come first served basis.

Mr B also claims that the property specified was "*basically worthless*". But, in the absence of documentation from the time of the sale, I haven't seen anything that suggests C had attributed any specific value to the specified property. My understanding of the FPOC membership is that it entitles Mr B to a proportionate share of the sale proceeds of the specified property, rather than a share in the ownership of it. And the purchase agreement normally makes clear the proposed date of sale – usually after around fifteen years.

Mr B's suggestion that C described the loan as being for home improvements is also not supported by the evidence I've seen. The Finance Agreement that Mr B signed includes a specific section which describes the timeshare rights acquired under the finance agreement. It makes no reference to home improvements at all. And in the absence of any evidence to corroborate Mr B's assertion, I can't reasonably conclude that C did represent the loan application in the way alleged.

Summary

I completely understand and appreciate that Mr B will be very disappointed. However, given my findings above, I don't currently intend to ask HC to do anything more here. However, the parties to this complaint now have until the deadline I've set to submit any new evidence and/or arguments before I consider my final thoughts.

Despite attempts by this service to follow up my provisional decision with Mr B, I can't see that we received a response. However, HC did acknowledge receipt confirming they have nothing further to add.

So, Mr B's complaint was passed back to me to reach a final decision.

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.

In the absence of anything new to consider following my provisional decision, I've found no reason to vary from those findings.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 6 August 2024.

Dave Morgan
Ombudsman