

## **The complaint**

Mr A complains that Mitsubishi HC Capital UK Plc trading as Hitachi Capital Consumer Finance (Hitachi) rejected his claim under the Consumer Credit Act 1974 (CCA) regarding his purchase of a points-based holiday product. The loan used to make the purchase is in Mr A's sole name, which is why the complaint is in Mr A's name only. But since Mr A bought the product with his wife, I'll refer to Mr and Mrs A throughout much of this decision.

## **What happened**

In 2019 during a promotional holiday, Mr and Mrs A entered into a contract with a company ("the Company") for the purchase of a holiday club membership. The membership was designed to allow them to use points to book holiday accommodation at a variety of resorts for a set number of years.

They funded the purchase with a loan for £16,388 from Hitachi to Mr A.

Mr and Mrs A say:

- They made it clear to Hitachi that they wanted to be able to take a ten-day break to Spain in the school Christmas holidays and another ten-day break to Spain in the school summer holidays.
- The Company recommended a 1,200 point membership at a cost of £16,388, and provided them with an illustration of holidays matching their requirements which it said they'd be able to take with that level of points.
- They quickly realised that 1,200 points per year wouldn't actually be anywhere near enough to take the holidays that they wanted. They raised this and were told it would be possible if they used special offers and getaways.
- They told the Company within the 14-day cooling-off period that they wished to cancel their membership.
- In response to their cancellation request, the Company accepted that their points allocation clearly wasn't enough, and offered them a free 7-day holiday to keep the membership in place, during which an adjustment to their points allocation would be looked at.
- They've discovered that the Company actually based its points illustration on weeks outside school holidays.
- They felt very pressured to keep the membership and withdraw their cancellation.

- They were also encouraged to sign up by an invitation programme, under which they'd receive £100 for every family they referred to the Company who subsequently took a holiday with it. This would double to £200 per referral after the fourth referral. They were confident that they could earn more than enough through this to pay the yearly membership fee.
- The Company's sales team is no longer operating, so they can't make use of the referral scheme. This amounts to a huge change to the membership they were sold.
- They haven't been able to use any of their points "due to being too frightened to use them and becoming more involved with the company that [they] no longer trust".
- They are liable for annual maintenance costs of approximately £850, and will suffer further financial hardship if they pay for a product that's of no use to them.

Hitachi rejected Mr A's claim. It said:

- Notes made on the day the Company met with Mr and Mrs A to discuss the purchase show that they wanted to use the membership with family and take advantage of special offers and holiday exchanges.
- Mr and Mrs A were given ample time to read all the paperwork before signing.
- Mr and Mrs A subsequently booked holidays, indicating that they wanted to continue with the membership.
- Mr and Mrs A requested cancellation of their membership within the cooling-off period. But a few days later, Mr A asked for clarification on how to make the most of the membership, so that they could make a final decision. A call was arranged for the same day to discuss the different membership levels and accommodation options, and a couple of days after that, Mrs A told the Company they'd changed their mind and wanted to go ahead after all.

One of our investigators considered Mr A's complaint, but didn't recommend that it should be upheld. In summary, she didn't think there'd been any misrepresentation on the part of the Company and she didn't think it had breached its contract with Mr A. She also considered whether a court might consider the relationship between Mr A and Hitachi to have been unfair. But she wasn't convinced it would. So she didn't think it was unfair of Hitachi to turn down Mr A's claim.

Mr A didn't agree with the investigator's view, so the complaint was passed to me.

### *My first provisional decision*

After considering all the evidence, I issued a provisional decision on this complaint to Mr A and to Hitachi on 5 April 2023. I said:

*“I’ve considered all the available evidence and arguments to decide what’s fair and reasonable in the circumstances of this complaint.*

*Where the evidence is incomplete, inconclusive or contradictory, I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in the light of the available evidence and the wider circumstances.*

*Having done so, I don’t think Hitachi has acted entirely fairly in declining Mr A’s claim. I’ll explain why.*

### *Misrepresentation*

*A misrepresentation is, in very broad terms, a statement of law or of fact made by one party to a contract to the other, which is untrue and which induces the other party to enter the contract.*

*Under s.75(1) CCA a consumer who has a claim for breach of contract or misrepresentation against a supplier may be able to bring that claim against a lender. And under s.56 CCA statements made by a broker in connection with a consumer loan are treated as having been made as agent for the lender.*

*The central point of Mr A’s complaint is that he and Mrs A believe that the Company mis-sold them the holiday club membership because it led them to believe that they’d be able to use their points to take more than one holiday per year during school holidays, but that turned out not to be true.*

*I don’t doubt that Mr and Mrs A genuinely believe they were told they’d be able to use their annual points allocation to take more than one holiday per year during school holidays. But I’m not persuaded that this was because of any factually inaccurate statements by the Company’s representative.*

*There are some inconsistencies in what Mr and Mrs A have said about what they told the Company about their requirements when they took out the membership. On our complaint form, completed around 11 months after they took out the membership, they said they’d set out their requirements to the Company. And they said those were a ten-day holiday to Spain in the Christmas holiday and another ten-day break to Spain in the summer holiday. They said the Company recommended a 1,200 point membership costing £16,388.*

*But in a letter to the Company just over a year after Mr and Mrs A completed our complaint form, they said they clearly stated their requirements at the meeting on the day they took out the membership. And they said those requirements were a week in the school summer holidays in a particular part of Spain, a week in Spain in either the April, June or October half term holiday and a week in one of the Canary Islands at Christmas time for their family of two adults and three children. While the total length of holidays is broadly the same, the two accounts are different.*

*The Company has provided computer notes of its meeting with Mr and Mrs A written on the day of the meeting when they took out the membership. In those notes, it says that they wanted to use mainly exchange or cash deals for their holidays. And it says "They understand that if they travel in school holidays with CLC pts they will get 1 wk a year. Both happy with that."*

*A further computer note, written the day after they took out the membership, states that Mr and Mrs A said they'd take a minimum of one holiday per year. They'd mainly travel in school holidays, and would sometimes have their three children with them, rather than just the two who were there with them when they took the membership out. They said they'd use their points and upgrade for the main holiday, and would use other means and deals for other holidays and breaks.*

*The Company has also provided a computer note of a phone conversation between Mr A and the Company's representative two days before the end of the cooling-off period. It states that Mr A "said that idea was to use CLC and not pay extra, reminded Mr that in my office I explained that for their pts they're get 1 wk and rest with cash. Mr agreed to it but now would like to know how to get the most of it. Offered that we can change the membership to get more pts. Mr interested in that as he wants to take his final decision today."*

*Mr and Mrs A say that when they told the Company they wanted to cancel their membership, it admitted that their points allocation wasn't enough to book the holidays they wanted, but it told them they'd need to travel to Spain to put it right. They say that the Company then used the fact that they tried to book a holiday to sort the situation out as evidence that they were happy with their membership.*

*But having considered all the evidence that's been provided, I'm not satisfied, on balance, that the Company told Mr and Mrs A that they'd be able to book more than one holiday per year in the school holidays using their points. I think that the points that they bought were in line with what they told the company they wanted. And I think that Mr and Mrs A were aware of this when they decided to continue with their membership rather than cancelling.*

*It's apparent from both what Mr and Mrs A have told us and from the Company's notes that the possibility of changing the membership to include more points was discussed. But I'm not persuaded that this was because the Company hadn't reflected Mr and Mrs A's wishes or instructions in the number of points included in the membership they bought. Nor am I persuaded that the Company misrepresented what Mr and Mrs A would be able to do with those points.*

*As far as the referral programme is concerned, I accept that Mr and Mrs A had planned to use it to generate money to put towards their holidays. They joined the referral programme when they bought the holiday club membership. They say that the Company's representative told them they could earn more than enough, using the referral programme, to cover their yearly maintenance payments to the Company.*

*I can understand Mr and Mrs A's disappointment that they haven't been able to take advantage of the referral programme. But I can only require Hitachi to take action to put things right if I think there was a misrepresentation or breach of contract by the Company.*

*At the time when Mr and Mrs A took out their membership of the holiday club, the referral scheme was up and running and I've seen nothing to make me think that the Company was aware that the scheme would be withdrawn. So I don't think the Company misrepresented the position when it told Mr and Mrs A about the referral scheme or the potential to generate money by referring friends. But I need also to consider whether there was a breach of contract with regard to the referral scheme.*

#### *Breach of contract*

*I can't see any reference to the referral scheme in the acquisition agreement, or anything to make me think that it formed an integral part of the holiday club membership that Mr and Mrs A used the loan to buy. And I haven't seen anything to make me think that the Company guaranteed that they'd be able to generate income from the referral scheme.*

*However, s.50(1) Consumer Rights Act 2015 provides that:*

*"Every contract to supply a service is to be treated as including as a term of the contract anything that is said or written to the consumer, by or on behalf of the trader, about the trader or the service, if—*

*(a) it is taken into account by the consumer when deciding to enter into the contract, or*

*(b) it is taken into account by the consumer when making any decision about the service after entering into the contract."*

*Based on the evidence provided, I'm satisfied that Mr and Mrs A were told that they'd be able to use the referral programme to generate income. And I accept that they took this into account when deciding to take out the membership. So I consider the ability to use the referral programme amounted to a term of the contract in this particular case. And based on the facts of this particular case, I think the fact that the closure of the referral scheme has prevented Mr and Mrs A from taking advantage of this benefit, amounts to a breach of contract on the Company's part. Mr A, as the borrower, has a like claim for that breach against Hitachi, under s.75 CCA. And I'm not persuaded that it was reasonable of Hitachi to turn down his claim.*

*As I'm considering Hitachi's liability for a "like claim", I need to consider what remedies or relief a court might order against the supplier in this sort of situation.*

*The referral scheme is no longer operating. In the absence of any specific clause in the contract providing for a remedy in this situation, a court would need to consider the law on damages.*

*Damages for breach of contract are designed to compensate the party that's lost out for their loss. The aim is to put them in the position they'd have been in if the contract had been performed, as far as that can be done by a monetary award. So assessing damages involves comparing the position the claimant is in following the breach of contract with the position they'd have been in if the breach hadn't happened.*

*Mr and Mrs A would have received £100 each time a friend or family member they referred took a promotional holiday and attended a presentation with the company. If a fourth referral was made in a given calendar year, the referral reward would have doubled to £200. It looks, from the email Mr and Mrs A were sent about the scheme, as if this worked retrospectively- in other words if Mr and Mrs A had made a fourth successful referral in a given calendar year, their credit would automatically have increased to £800 for that year.*

*Deciding how much compensation Mr A should receive for this breach of contract isn't straightforward. Given that the referral scheme closed early in their membership, Mr and Mrs A had little, if any, chance to use it. So I have no history of referrals by Mr and Mrs A to take into account in deciding how much use of the scheme it's realistically likely they'd have made if it had continued to operate.*

*But I don't doubt that Mr and Mrs A aimed to generate significant returns from the referral scheme. And I accept that it's likely that they'd have made a number of successful referrals in the first couple of years. But I think it's unlikely that they'd have been able to continue to introduce a significant number of new members year after year indefinitely. And after the first couple of years, I think it's more likely than not that the referrals would have tailed off.*

*As there's no history of referrals by Mr and Mrs A to go on, I have to take a broad-brush approach to deciding how much it's fair to require Hitachi to pay. Overall, I think it's reasonable to suggest that Mr and Mrs A are likely to have generated enough income through the referral scheme to cover their yearly membership fees of the holiday club for two years. Those fees are shown in the acquisition agreement as 990 euros per year, which amounts to roughly £875 per year at current exchange rates. So two years' worth of management charges equate to roughly £1,750, which I think is a practical and proportionate estimate of Mr and Mrs A's likely loss. So I think Hitachi should pay that amount to Mr A.*

#### *Unfair relationship*

*Our investigator also considered whether there was an unfair relationship between Mr A and the Company. S.140A CCA gives a court power to require a creditor to repay any sum paid by the debtor under a credit agreement if it determines that there's an unfair relationship between the debtor and the creditor. Only a court has the power to decide the outcome of a claim under s.140A. But I need to consider whether it was fair and reasonable of Hitachi to turn down Mr A's claim.*

*I haven't seen anything to make me think that Mr and Mrs A were unduly pressured into taking out the holiday club membership or taking out the loan to fund the purchase, or that the Company used unacceptable commercial practices in its dealings with Mr and Mrs A.*

*I acknowledge that Mr and Mrs A say that none of the resorts are fully functioning, and there are no shops, bars or restaurants on site. They also say that the accommodation is no longer exclusive. They've discovered that anyone can book, and holidays are available online for a fraction of the price they've paid.*

*But I'm not convinced, based on the evidence I've seen, that Mr and Mrs A were told that the accommodation would be, or remain, exclusive to members of the holiday club. Nor have I seen anything to make me think they were given any guarantee that particular facilities would be available.*

*And as I've commented above, I think that the holiday club membership Mr and Mrs A bought with the loan from Hitachi was in line with what they told the Company they wanted. Taking everything into account, I think it unlikely that a court would conclude that the relationship between Mr and Mrs A and Hitachi was unfair.*

*Putting things right*

*My provisional decision is that Hitachi should pay Mr A £1,750 to compensate him for the fact that he wasn't able to benefit from the referral scheme."*

*My second provisional decision*

Both Mr and Mrs A and Hitachi commented on my first provisional decision. And having considered the further comments and evidence provided by both parties, I issued a second provisional decision to Mr A and to Hitachi on 21 August 2023. I explained that I'd taken into account everything the parties had said, but I summarised the main points as follows.

*Mr and Mrs A's further comments*

Mr and Mrs A reiterated that they were told that the resorts would be exclusive, but that's turned out not to be the case.

They also said the following valuable incentives to take out the membership were offered but not delivered:

- £1,000 worth of flight vouchers, which they claim had no expiration date.
- A free bonus week. Mr and Mrs A say they were originally told it could be used for Christmas, and that it was extended once due to covid, but has now expired. They value this at £1,500, based on the current price to stay at Christmas.
- A further free break, offered as an incentive not to cancel, when Mr and Mrs A said they wanted to cancel within the cooling-off period.

They said they were specifically told they could earn £2,400 per year and that one family was making 20 referrals per year. They said this was a deciding factor, and that they had 20,000 followers on their social media. They said they had ten enquiries from just one post.

They haven't paid maintenance fees since 2020. They said the unpaid fees total around £3,080. They said they were advised not to pay them while the case was with this service. They pointed out that they've been making their finance payments to Hitachi, but haven't been able to use the resort because of the missed maintenance payments. So they've been paying for holidays elsewhere.

*Hitachi's further comments*

Hitachi said it didn't accept that the referral scheme formed part of the contract for two reasons:

- a. it didn't form part of the acquisition agreement.
- b. It wasn't guaranteed that the referral scheme would run indefinitely

Hitachi also said it believes that it's unlikely that Mr and Mrs A would have made many, if any referrals because:

- a. They were dissatisfied with various aspects of the membership
- b. Any referrals they did make would have been subject to acceptance by the Company, and probably subject to acceptance for a loan too. So they weren't guaranteed to succeed.
- c. Mr and Mrs A didn't make any referrals before the referral scheme was suspended in March 2020.
- d. The average referral income generated by members was no more than £4 or £5 per year.

Hitachi said that it was prepared to offer Mr and Mrs A a goodwill gesture of £200 to reflect their disappointment that the referral scheme was withdrawn. But it didn't accept that any further compensation was appropriate.

*The findings in my second provisional decision*

I said:

*"I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.*

*I'll comment on the further submissions the parties have made in turn, starting with what Mr and Mrs A have said.*

*Mr and Mrs A's further points*

*I said in my previous provisional decision that I'd seen no evidence that Mr and Mrs A were told that the resorts available to them as members would be exclusive. I've seen nothing to make me change my view about that.*

*Mr and Mrs A have provided copies of the flight vouchers, which they say had no expiration date. But the vouchers show an issue date of 30 December 2019. And Mr and Mrs A have provided a copy of what appears to be the back of the vouchers, which clearly says that they're valid for a year after issue. So on that basis, they'd have been valid until 30 December 2020.*

*As regards the free bonus week, Mr and Mrs A have provided a copy of the certificate they were given. It's dated 30 December 2019. The terms and conditions are printed on the back. They state that the certificate must be redeemed within 90 days of the membership being taken out, and the holiday accommodation must be used within the first 12 months of membership.*



*In the end, Mr and Mrs A didn't make use of the flight vouchers or the bonus week. I don't know whether that was because they were dissatisfied with the membership, or because travel was difficult or impossible due to the covid pandemic, or for some other reason. I've seen nothing to make me think that Mr and Mrs A wouldn't have been able to take advantage of the bonus week if it hadn't been for the difficulties with travel that arose during the pandemic. The travel restrictions would inevitably have made it more difficult for Mr and Mrs A to go on holiday. But that difficulty was the result of events beyond the control of any party to the contract, and not a breach of contract on the Company's part.*

*A contract is sometimes described as being "frustrated" if something happens after the contract is formed which makes it physically, legally or commercially impossible to fulfil the contract. But I don't need to consider whether the contract was frustrated in this case because even if it was, frustration is different from a breach of contract. And the only claim I have the jurisdiction to consider here is one of breach of contract under Section 75 of the CCA. And I've seen nothing to make me think that the Company breached the contract regarding the bonus week. So I can't fairly require Hitachi to compensate Mr and Mrs A for the fact that they didn't use it.*

*The possibility of a further free break, which Mr and Mrs A say was offered by the Company as an incentive not to cancel their membership, only arose once their membership was up and running. It couldn't have amounted to a misrepresentation on the Company's part, as a misrepresentation is a statement that induces someone to enter a contract. It didn't form part of the contract between Mr and Mrs A and the Company. So again, I can't fairly require Hitachi to compensate Mr and Mrs A for the fact that they didn't take the further free break.*

*It isn't clear who advised Mr and Mrs A not to pay their maintenance fees while their complaint was being considered by this service. But I think it's unlikely that the advice came from the Company. The decision to withhold maintenance fees was ultimately Mr and Mrs A's. And I can't see how any failure to use their membership as a result could be said to arise from a breach of contract on the Company's part. So I couldn't require Hitachi to provide Mr and Mrs A with any redress in respect of that part of their complaint.*

*As Hitachi and Mr and Mrs A have both commented further on the question of the referral bonus scheme, I'll consider their comments together, after dealing briefly with the other points Hitachi has made in response to my provisional decision.*

#### *Hitachi's further points*

*Hitachi has commented that the referral scheme didn't form part of the contract because it wasn't referred to in the acquisition agreement. I acknowledged in my previous provisional decision that I could see no mention of the referral scheme in the acquisition agreement. But I explained in some detail why I consider that 50(1) Consumer Rights Act 2015 meant that the ability to use the referral programme amounted to a term of the contract in Mr and Mrs A's particular case. And my view remains unchanged.*

*Hitachi says there was no guarantee that the referral scheme would continue indefinitely. But given that I'm satisfied that the ability to use the referral scheme formed part of the contract, I don't see any reason why it should be treated differently from any other provision of the contract. The ability to use the referral scheme was part of what Mr and Mrs A believed they would receive as part of their membership.*

*I accepted in my previous provisional decision that Mr and Mrs A believed that they could earn a considerable amount of money by referring friends, and that they took this into account when deciding to take out the membership. I take Hitachi's point that the average referral income generated by members was only £4-£5 per year. But that's only an average, and it doesn't mean that it wouldn't have been possible to earn more – or even considerably more. And if a member did make a large number of referrals, it's likely that at least some of them would have been successful.*

*But I find the other points that Hitachi has made persuasive. Mr and Mrs A have told us they had ten expressions of interest in response to one social media post. But Hitachi has pointed out that they didn't make any referrals at all before the scheme was suspended in March 2020, even though they had the opportunity to do so.*

*If Mr and Mrs A making a large number of referrals was a realistic prospect, I think it's likely that they'd have started to refer people before the scheme was withdrawn. Hitachi has also commented that Mr and Mrs A were dissatisfied with various aspects of their membership. This is supported by comments that Mr and Mrs A have made during the course of the complaint. And I'm persuaded by Hitachi's argument that it's unlikely that Mr and Mrs A would have wanted to recommend something they were so dissatisfied with.*

*Ultimately, Mr and Mrs A were dissatisfied with their membership. But I've seen nothing to make me think that dissatisfaction arose from any misrepresentation or breach of contract on the Company's part. The only breach of contract I've identified was the withdrawal of the referral scheme. I don't doubt that when they took out the membership, Mr and Mrs A genuinely planned to generate income by referring friends. But taking into account Hitachi's further comments, Mr and Mrs A's dissatisfaction with the membership, and the lack of any referrals while the scheme was still up and running, I'm not convinced that they'd have made many, if any referrals under the scheme.*

*Taking everything into account, I no longer believe that it would be fair to require Hitachi to compensate Mr and Mrs A for the Company's breach of contract in withdrawing the referral scheme. This is because I'm not persuaded, on balance, that Mr and Mrs A suffered any loss as a result.*

*If Mr and Mrs A wish to accept Hitachi's goodwill offer of £200, they should contact Hitachi directly."*

#### *Further submissions following my second provisional decision*

Mr and Mrs A have provided some further comments and evidence in response to my second provisional decision. As in the case of my previous decisions, I've taken into account everything they've said, but I'll summarise what I consider to be the main points here.

- Mr and Mrs A have reiterated that they were told they could have more than one holiday per year in school holidays right at the beginning of the complaint. They've sent an illustration which they believe shows this.
- Mr and Mrs A say the relationship is unfair because they haven't been able to use the club, due to it not meeting their requirements.
- Mr and Mrs A say there was less than a month between them returning from holiday in early January 2020 and the first cases of covid, and that's why they didn't make referrals.

- Mr and Mrs A have pointed out that members would have been paid (£100) for referrals after a referred family had had a holiday and attended a presentation. They'd have received further payment (£200) for anyone they referred who subsequently became a member.
- Mr and Mrs A have challenged B's assertion that the average referral income was £4 or £5 per year.
- Mr and Mrs A have reiterated that they were told the resorts would be exclusive.

### **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.

Having done so, I don't consider that there's a good reason to depart from the conclusions I set out in my second provisional decision. I'll explain why.

I've considered the further comments and evidence provided by Mr and Mrs A, but my view remains that the Company made it clear to them before they took out the membership that their points would only enable them to take one holiday per year in school holidays, and that if they wanted to take further breaks during school holidays, they'd need to use other means. I think Mr and Mrs A understood that at the time. And I don't find that the Company misrepresented the position.

I acknowledged in my second provisional decision that the referral bonus income figure of £4/£5 quoted by Hitachi is only an average figure. A member making even a single referral would have generated a referral bonus of £100. I think it's reasonable to assume that the average of £4/£5 took into account all members, including many who made no referrals at all. I also acknowledged in my second provisional decision that reference to an average figure doesn't take a member's individual earning potential into account.

I accept Mr and Mrs A's point that it looks as if they could, in theory, have earned at least £800 per year just by persuading four families to take a promotional holiday and attend a presentation. It seems that their contacts wouldn't, in fact, have had to be accepted as members of the club, or be approved for a loan, in order for them to have received the initial £100 referral bonus. And I have no reason to doubt Mr and Mrs A when they say that the fact that they were dissatisfied with the facilities available to them as members wouldn't have put them off making referrals.

But I'm not persuaded by Mr and Mrs A's assertion that the reason they didn't make any referrals was due to the brief window between returning from their first holiday with the Company and the first covid cases. Travel restrictions weren't imposed until mid-March 2020 – the same month that the referral scheme was withdrawn. That would still have given Mr and Mrs A a good two months to make referrals.

It may well be that if Mr and Mrs A had made referrals during that time, the holidays wouldn't have ended up actually going ahead due to covid restrictions. But I'd have thought that Mr and Mrs A would have been particularly keen to make referrals when they returned from their holiday in January 2020, with their initial enthusiasm for the membership, and the memory of the holiday fresh in their minds. And if they had as many potentially enthusiastic contacts as they say they did, I think it likely they'd have made at least one referral before it became clear that nobody was going to be able to travel for a while.

I've explained previously that I don't accept Mr and Mrs A's assertion that they were told that the resorts available to them as club members would be exclusive. Mr and Mrs A also complain that holidays at the Company's resorts are still available to the general public even when there's no availability for members. They've provided screenshots of online forums in which others have expressed frustration and disappointment at not being able to book accommodation, even far in advance.

But I think it's fair to assume that demand increases in school holidays. As I've previously commented, it was made clear in the paperwork that accommodation was subject to availability, and the Company is unlikely to have been in a position to know, at the time of sale, that specific accommodation wouldn't be available when Mr and Mrs A wanted to book it. So I can't reasonably find that the Company misrepresented the position or that the unavailability of specific accommodation amounted to a breach of contract.

Finally, as I've previously explained, I don't accept that any failure of the membership to meet Mr and Mrs A's requirements was due to any misrepresentation or breach of contract on the Company's part. And I think it unlikely that a court would consider the relationship between Mr A and Hitachi to be unfair under Section 140A of the CCA.

I know that Mr and Mrs A will be disappointed with my decision. I realise that they are disappointed with their membership. But for the reasons I've set out, having thought carefully about all the submissions and evidence provided by both parties, I consider that I can't fairly uphold this complaint, or require Hitachi to take any further action.

If Mr and Mrs A wish to accept the £200 that Hitachi has offered them as a goodwill gesture, they should contact Hitachi directly.

### **My final decision**

My decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 27 December 2023.

Juliet Collins  
**Ombudsman**