

## **The complaint**

Mr F says that JAJA FINANCE LTD, who now have responsibility for his Post Office credit card account, unfairly declined his claims under the Consumer Credit Act 1974 (the 'CCA') in relation to a timeshare product he was sold in November 2012.

Mr F has been represented by a professional representative who I'll call "PR" and he entered into the timeshare agreement with his partner, but as the finance agreement was in his sole name, I will refer only to Mr F or his representatives in this decision. I mean no disrespect to Mr F's partner when doing so.

## **What happened**

I issued a provisional decision on this complaint earlier in the year. An extract from that provisional decision is set out below.

*In November 2012 Mr F relinquished a trial timeshare agreement with a supplier I'll call "Ab" and exchanged it for points to be used towards a more permanent timeshare product with the same supplier. The balance was to be paid in instalments using his then Post Office credit card.*

*In November 2018 Mr F complained to JAJA about problems he had encountered with the timeshare product. He said it had been misrepresented to him because he was promised he'd be able to book resorts worldwide but subsequently discovered he could only book holidays in Asia, and accommodation elsewhere was provided at additional cost through a third party company. He said he was not told maintenance fees would increase but they had. He also said the purchase was very pressured and he wasn't afforded time to consider the paperwork.*

*JAJA didn't think Mr F's claim about his November 2012 payment had been made in time and they suggested it was time barred under the Limitations Act 1980 (LA). They didn't uphold his claim under section 75 of the Consumer Credit Act 1974 because they said there wasn't a relevant debtor-creditor-supplier link.*

*Mr F, therefore, referred his complaint to this Service. Our investigator thought it was unnecessary for her to consider the d-c-s link in detail as she didn't think a claim for misrepresentation under section 75 could succeed.*

*PR didn't agree with the investigator's view. They thought she hadn't given sufficient weight to Mr F's testimony and explained that this Service had supported consumer's claims in the past where documentary evidence was to the contrary but they, nevertheless, had accepted the consumer's oral submissions. They asserted that Mr F had been persuaded to purchase his timeshare because of the verbal representations of Ab and that the claim should therefore succeed. They therefore asked for a decision by an ombudsman.*

## **What I've provisionally 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.*

*I'm issuing a provisional decision here as it's been some time since the investigator provided her view and I can't see we've responded to all of the issues in the case.*

*I'm required by DISP 3.6.4R of the Financial Conduct Authority's (FCA's) Handbook to take into account the relevant, laws and regulations; regulators rules, guidance, and standards; codes of practice and, when appropriate, what I consider to have been good industry practice at the relevant time.*

*The Financial Ombudsman Service is designed to be a quick and informal alternative to the courts under the Financial Services and Markets Act 2000 (FSMA). Given that, my role as an ombudsman is not to address every single point that has been made. Instead, it is to decide what is fair and reasonable given the circumstances of this complaint. And for that reason, I am only going to refer to what I think are the most salient points. But I have read all of the submissions from both sides in full and I keep in mind all of the points that have been made when I set out my decision.*

### **The Consumer Credit Act (CCA) 1974 and section 75**

*When something goes wrong and the payment was made with a fixed sum loan, as was the case here, it might be possible to make a "section 75" claim. This section of the CCA says that in certain circumstances, the borrower under a credit agreement has a right to make the same claim against the credit provider as against the supplier if there's either a breach of contract or misrepresentation by the supplier.*

*One of those circumstances is that there needs to be a valid debtor-creditor-supplier relationship, and here JAJA argues that there isn't because the company Mr F paid doesn't appear to be the supplier, so JAJA, as creditors, don't have a relationship with the supplier. There may be occasions where a creditor sends money to an "associate" of the supplier and the relationship remains intact, but I've not found it necessary to consider that here currently as, regardless, I don't think the claim for misrepresentation under section 75 would be likely to succeed if a court considered it.*

*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 materially influenced the other party to enter into the contract.*

*This wasn't Mr F's first transaction with the supplier. He was two years into a three year trial arrangement by the time he signed up for this agreement. By then I think Mr F would be well aware of how the general timeshare product scheme worked. It's unfortunate, but perhaps understandable given the age of this agreement, that I've not been provided with all of the contractual documents that should have been available in this case. I've not for instance, had sight of the Club Rules mentioned in the "Annual Ownership – New Owners Declaration". Given this Service's experience with similar cases, I think they would have been likely to have shed more light on the maintenance fee structure, but on the basis of Mr F's testimony alone I'm not persuaded he was given a false statement of fact about those maintenance fees and their future level. I think his experience with this supplier and with the trial membership would have been likely to have given him an understanding of how those fees, if any, worked.*

*While Mr F says he wasn't made aware accommodation wasn't available outside of Asia through Ab I can see the "Annual Ownership – New Owners Declaration" suggests otherwise. It says:*

*“I understand that (Ab) is able to offer only Resorts in certain locations as per the (Ab) Destination Website”.*

*On balance I find the documentary evidence more persuasive than Mr F’s uncorroborated testimony here, and I don’t think a court would consider there was sufficient evidence of misrepresentation.*

### **The claim under section 140A of the CCA**

*Mr F says he wasn’t afforded sufficient time to consider the paperwork and that he was put under undue pressure to agree to the purchase. He raised that under section 75, but I don’t think they are issues that could be considered under that section of the Act as they’re not to do with a breach of contract or misrepresentation. I think they are better considered under section 140A.*

*Section 140A CCA looks at the fairness of the relationship between a debtor and creditor arising out of the credit agreement (taken together with any related agreement).*

*Section 56 of the CCA is relevant in the context of section 140A of the CCA as the pre-contractual acts or omissions of the credit broker or supplier will be deemed to be the responsibility of the lender, and this may be taken into account by a court in deciding whether an unfair relationship exists between Mr F and JAJA.*

*Mr F had already attended a presentation with the same supplier when he signed up for his trial membership. So, I think he would have been likely to have had an understanding of the approach that would be taken. I don’t think I’ve been provided with sufficient information to suggest Mr F didn’t understand he didn’t have to say yes to the agreement or that he didn’t understand he could walk away without entering into it.*

*Overall, I’m not persuaded that Mr F’s ability to exercise choice was – or was likely to have been – significantly impaired.*

### **My provisional decision**

*I’m not expecting to uphold this complaint.*

### **Further evidence and/or information**

Neither Mr F nor JAJA provided any further evidence or information.

### **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.

I’ve not been provided with any additional evidence or information that would lead me to change my provisional decision. My provisional decision, therefore, becomes my final decision on this complaint.

### **My final decision**

For the reasons I’ve given above, I don’t uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 22 December 2023.

Phillip McMahon  
**Ombudsman**