

The complaint

Mr M complains that Mitsubishi HC Capital UK plc won't refund to him the money that he paid for some holiday club membership point rights. His wife is also involved in his complaint and he's being represented by a claims management company.

What happened

Mr M and his wife had bought a trial membership of a holiday club in July 2019, which had a price of £4,395, and Mr M's wife had entered into a fixed sum loan agreement with Mitsubishi Capital for a loan of that amount. They traded in their trial membership and bought 1,100 holiday club membership point rights in November 2019. They entered into an acquisition agreement with the holiday company and agreed to pay it £15,287. Mr M entered into a fixed sum loan agreement with Mitsubishi Capital for a loan of £19,471, which included £4,184 to consolidate his wife's July 2019 loan. He agreed to make 180 monthly repayments of £224.89 to Mitsubishi Capital.

Mr M's representative made claims, on behalf of Mr M, to Mitsubishi Capital in January 2021 under sections 75 and 140A of the Consumer Credit Act 1974. It said that the product was misrepresented to Mr M and his wife; the contract was breached; commission was paid between Mitsubishi Capital and the holiday company which wasn't disclosed to Mr M which created a breach of fiduciary duty and caused an unfair relationship; the loan was unaffordable; and the relationship between Mr M and Mitsubishi Capital was unfair.

Mitsubishi Capital responded to those claims in detail and set out the reasons that it wasn't upholding Mr M's complaint. Mr M wasn't satisfied with its response so a complaint was made to this service. Mr M's complaint form says that the holiday company and Mitsubishi Capital failed to conduct a proper assessment of his ability to afford the loan; Mitsubishi Capital paid a commission to the holiday company which wasn't declared to him and the holiday company unduly pressured him and his wife into entering into the acquisition agreement and him into entering into the loan agreement; all rendering the loan agreement unfair pursuant to section 140A.

Our investigator didn't recommend that Mr M's complaint should be upheld as she didn't think that Mitsubishi Capital's decision to turn down Mr M's claims was unfair or unreasonable. She wasn't persuaded that there was a misrepresentation at the time of sale and she didn't think that the holiday company had breached the contract. She said that she hadn't seen enough to suggest that the relationship between Mr M and Mitsubishi Capital was unfair and she wasn't persuaded that a court would reach the conclusion that the relationship was unfair. She then also said that she hadn't seen anything to persuade her that the money lent to Mr M was unaffordable given his financial circumstances at the time of sale.

Mr M's representative says that Mr M doesn't agree with the decision made and would like the matter referred to an ombudsman. It has raised concerns about the way that the finance was sold to Mr M and says that the holiday company didn't broker proper credit and failed to meet the standard of a regulated firm. It has also referred to a decision issued by this service on a complaint relating to a different type of holiday ownership product in which it says the

voluminous documentation for the product was reviewed and the debtor-creditor relationship was considered to be unfair. It says that the same voluminous documents and the same unfair charges exist in the product that was sold to Mr M and his wife so Mr M's relationship with Mitsubishi Capital is unfair.

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 agree with our investigator that Mr M's complaint shouldn't be upheld for these reasons:

- Mr M and his wife signed the acquisition agreement in November 2019 to buy 1,100 holiday club membership point rights and they traded in their trial membership – the cost price of the membership point rights, including legal and admin fees, was £19,682 from which the trade-in value of £4,395 was deducted, so the amount due from them was £15,287;
- there was an outstanding amount due to Mitsubishi Capital from Mr M's wife under the loan agreement that she'd entered into in July 2019 of £4,184 and Mr M entered into a loan agreement with Mitsubishi Capital for a loan of £19,471 – the £15,287 due to the holiday company and £4,184 to consolidate his wife's loan;
- Mr M and his wife also signed other documents including the terms and conditions, a member's declaration, a standard information form and a separate standard form of the withdrawal notice that could be given to withdraw from the acquisition agreement;
- Mr M's representative, on Mr M's behalf, made claims to Mitsubishi Capital in January 2021 about the acquisition agreement that Mr M and his wife had entered into in November 2019 and Mr M then made a complaint to this service – the claim letter refers to claims under sections 75 and 140A, including that the 1,100 membership point rights were misrepresented to Mr M and his wife, but his complaint form only refers to claims under section 140A and doesn't refer to a misrepresentation made by the holiday company;
- section 75 gives a consumer an equal right to claim against the supplier of goods or services or the provider of credit if there's been a breach of contract or misrepresentation by the supplier (provided that certain criteria set out in that section are met) and section 140A gives a court the power, amongst other things, 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;
- I'm not determining the outcome of Mr M's claims under sections 75 and 140A as only a court would be able to do that but I'm considering whether or not Mitsubishi Capital's response to his claims was fair and reasonable in the circumstances;
- Mr M's representative's January 2021 letter says that the membership point rights were misrepresented to Mr M and his wife because they were advised that the product was of some substance but it's now clear that the product is worthless and has no merit;
- I consider it to be clear from the acquisition agreement that Mr M and his wife had bought 1,100 membership point rights and the standard information form says: *"The Vacation Club is a multi-resort holiday Points system which allows Members to acquire their Points each year to use and enjoy the various Resorts located worldwide held within the Vacation Club from time to time"*;

- neither Mr M nor his representative has provided a detailed account of the circumstances in which the alleged misrepresentation was made, the conversations that took place or the information that was provided to Mr M his wife before their November 2019 purchase;
- the membership point rights could be used for holidays so I'm not persuaded that they're worthless and have no merit or that there's enough evidence to show that the membership point rights were misrepresented to Mr M and his wife by the holiday company or that they were induced into entering into the acquisition agreement by any such misrepresentations;
- the January 2021 letter also says that the seller has ceased to trade and has committed a repudiatory breach of contract and I consider that the liquidation of the seller could be a breach of contract for which Mitsubishi Capital might be liable under section 75 - but I understand that although the seller has stopped trading, the membership point rights remain available for Mr M and his wife to use and I've seen no evidence to show that their use of their membership point rights has been adversely impacted by the liquidation of the seller;
- I don't consider that Mitsubishi Capital has any liability to Mr M under section 75 for a breach of contract in these circumstances and I'm not persuaded that Mr M and his wife would be entitled to terminate their acquisition agreement;
- the January 2021 letter says that commission was paid between Mitsubishi Capital and the holiday company which wasn't disclosed to Mr M which created a breach of fiduciary duty and caused an unfair relationship and Mr M's complaint form says that Mitsubishi Capital paid a commission to the holiday company which wasn't declared to him;
- Mr M and his wife had signed the member's declaration in November 2019 which said that the holiday company: *"... has a commercial arrangement with the lender who is providing the loan you have requested and as part of those commercial terms we may be entitled to a commission from the lender. Details of commission in respect of your loan are available on request by you quoting your contract number"*;
- I consider that Mr M knew, or ought reasonably to have known, that Mitsubishi Capital might be paying a commission to the holiday company but I've not seen any evidence to show that he asked either the holiday company or Mitsubishi Capital for any details about any commission that was paid and I've not been provided with any evidence to show what commission, if any, was paid by Mitsubishi Capital to the holiday company;
- from what this service has seen across the industry, if commission was ever paid it tended to be low and of less than 15% and I'm satisfied that Mitsubishi Capital wouldn't have breached any duty in making any such payment – nor was it under any regulatory duty to disclose the amount of any commission paid in these circumstances - and I don't consider that the level of any commission that was normally paid in this type of situation was sufficiently high to mean that Mitsubishi Capital should have appreciated that not disclosing any commission to Mr M risked the relationship being unfair under section 140A;
- the January 2021 letter also says that the loan was unaffordable for Mr M and his complaint form says that the holiday company and Mitsubishi Capital failed to conduct a proper assessment of his ability to afford the loan but neither Mr M nor his representative had provided detailed evidence about Mr M's financial position in November 2019 or to show that the loan wasn't affordable for him at that time;
- the loan agreement that Mr M signed in November 2019 shows that he was employed with a gross income of £50,000 and the loan agreement that his wife

entered into in July 2019 showed that she was employed with a gross income of £20,000;

- Mitsubishi Capital says that it searched Mr M's credit record and used it, with other information provided on his application, to calculate a credit score which exceeded its minimum lending criteria and that it utilises a third party affordability product and there were no indications that Mr M would struggle to service the loan – it says that Mr M told it that his gross annual income was £50,000, which was validated using data obtained from credit reference agencies, and his credit record showed his existing credit commitments and that he was a homeowner with no mortgage;
- it says that it calculated Mr M's net monthly income as £3,127 and that, after the loan repayment of £224.89 and the payment for his other credit commitments, he would be left with approximately £2,860 each month for other monthly expenses which, based on national averages, it says is generally sufficient to meet typical other expenses and given that there were no indications of financial stress on his credit file, there were no concerns about lending him an additional £19,471;
- Mr M and his wife signed the member's declaration which said: *"We have received the Pre-contract Credit Information document ... and have had adequate time to consider the information contained there on and any questions we have raised arising from this document have been explained to our satisfaction prior to signing and receiving a copy of our finance agreement"*; and: *"We understand clearly what we have purchased and, having carefully considered this and our other financial commitments, are able to pay the amounts due on the dates agreed and in the case of purchases made with the assistance of finance agree that we are not aware of any future event that may prevent us from meeting the monthly repayments"*;
- the loan was made to Mr M in November 2019 but I've seen no evidence to show that he asked Mitsubishi Capital for any information about the affordability assessment that it conducted before his representative's January 2021 letter;
- I consider that the evidence that Mitsubishi Capital has provided shows that it made reasonable and proportionate checks to assess whether the loan was affordable for Mr M before it was made to him and that it was reasonable for it to have concluded on the basis of the information that it had gathered that Mr M could afford a loan with a monthly repayment of £224.89;
- I'm not persuaded that there's enough evidence to show that the loan wasn't affordable for Mr M, that Mitsubishi Capital should have done more to assess the affordability of the loan for him, that the loan was mis-sold to him or that Mitsubishi Capital has acted incorrectly in connection with the loan;
- Mr M's complaint form says that the holiday company unduly pressured him and his wife into entering into the acquisition agreement and him into entering into the loan agreement – but the holiday company says that Mr M had made two purchases from it in 2002 which were held until 2006 when the membership was suspended for non-payment of the annual management fees – and Mr M and his wife had bought a trial membership from the holiday company in July 2019;
- Mr M and his wife had signed the separate standard form of the withdrawal notice that could be given to withdraw from the acquisition agreement within 14 days without giving any reason and the standard information form that they also signed said: *"The consumer has the right to withdraw from this contract without giving any reason within 14 calendar days from the conclusion of the contract, or any binding preliminary contract, or receipt of those contracts if that takes place later"*;
- the loan agreement said : *"You will have the right to withdraw from the agreement, without giving any reason, for a period of 14 days"*; but I've seen no evidence to show

that Mr M contacted either the holiday company or Mitsubishi Capital to withdraw from either the acquisition agreement or the loan agreement within the applicable withdrawal periods;

- Mr M and his wife signed those agreements in November 2019 but I've seen no evidence to show that they complained to either the holiday company or Mitsubishi Capital about the undue pressure that Mr M claims was applied to them until his representative's January 2021 letter – if they had been unduly pressured into signing the acquisition agreement and didn't want to buy the membership point rights, I consider that it would be reasonable to expect them to have contacted either the holiday company or Mitsubishi Capital about that issue sooner than they did;
- I'm not persuaded that there's enough evidence to show that Mr M and his wife were unduly pressurised into entering into the acquisition agreement or that Mr M was unduly pressurised into entering into the loan agreement or that the holiday company used unacceptable sales practices against them;
- Mr M's representative has referred to a decision issued by this service on a complaint relating to a different type of holiday ownership product in which it says the voluminous documentation for the product was reviewed and the debtor-creditor relationship was considered to be unfair – it says that the same voluminous documents and the same unfair charges exist in the product that was sold to Mr M and his wife so Mr M's relationship with Mitsubishi Capital is unfair;
- that decision related to a different type of holiday ownership product which was sold as an investment and related to a specified property – Mr M and his wife bought membership point rights from the holiday company which don't relate to a specified property and which I don't consider were sold to them as an investment;
- both products were often sold in similar ways and may have had similar contractual documentation but the operation and effect of the contractual documentation would be significantly different between the products;
- I don't consider that the presence of an unfair (or potentially unfair) term alone is likely to mean that a court would conclude that it created an unfair relationship between a debtor and a creditor as the court would consider how the term operated in practice and whether the operation of that term caused the relationship to be unfair;
- I'm not persuaded that there's enough evidence to show that the terms of the documents have been applied or operated unfairly against Mr M and his wife and I consider it to be unlikely that a court would conclude in these circumstances that the terms of the documents created an unfair relationship between Mr M and Mitsubishi Capital;
- the management charge was clearly set out in the acquisition agreement and the member's declaration said: *"We understand that currently the annual Point Rights Dues (Annual Service Charge) are € 1089.00 for 2020. The basis of this fee is set out in the Scheme Rules and Regulations of the Company"* and information about the management charges was also included in the standard information form;
- I'm not persuaded that there's enough evidence to show that the management charges are unfair or that Mr M and his wife have been required to pay any other unfair charges for their membership point rights;
- I'm not persuaded that there's enough evidence to show that Mr M's relationship with Mitsubishi Capital was unfair and I don't consider it to be likely that a court would conclude that there was an unfair relationship between Mr M and Mitsubishi Capital in these circumstances;

- I sympathise with Mr M for the issues that he and his wife have had with their membership point rights but I consider that Mitsubishi Capital's response to the claims that had been made to it was fair and reasonable in these circumstances; and
- I find that it wouldn't be fair or reasonable for me to require Mitsubishi Capital to refund to Mr M any of the money that he's paid under the loan agreement, to cancel the loan agreement, to pay him any compensation or to take any other action in response to his complaint.

My final decision

My decision is that I don't uphold Mr M's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 6 November 2023.

Jarrold Hastings
Ombudsman