

## **The complaint**

Mrs N says that Mitsubishi HC Capital UK Plc, trading as Hitachi Personal Finance (who I'll call Hitachi), unfairly declined her claims under the Consumer Credit Act 1974 (the 'CCA') in relation to a timeshare she was sold.

Mrs N has been represented by a professional representative, but as she is named on the credit agreement, and for convenience, I will refer only to her in this decision. I mean no disrespect to her representatives when doing so.

## **What happened**

I issued a provisional decision on this complaint in July 2023. An extract from that provisional decision is set out below.

### ***What happened***

*Mrs N purchased a timeshare in June 2019. She financed the deal through a fixed sum loan with Hitachi. The timeshare agreement expires in 2033, and the finance agreement is still running.*

*Mrs N complained to Hitachi in June 2021. It isn't practical to list all of Mrs N's concerns in detail here, but amongst other things, she said that the timeshare had been misrepresented to her and she therefore had a claim under section 75 of the CCA; there was an unfair relationship that gave her a claim under section 140A of the CCA; commission hadn't been disclosed to her; and that both the timeshare and finance agreements were null and void. She also complained that Hitachi hadn't performed adequate checks to ensure the finance agreement was affordable for her.*

*Hitachi didn't respond to Mrs N's complaint in time, so Mrs N referred it to this Service in September 2021, and later that month Hitachi provided their thoughts. They didn't think there was a reason to uphold the various elements of Mrs N's complaint.*

*Our investigator didn't think Mrs N's complaint should be upheld either.*

*In response to our investigator's view of this complaint, and Hitachi's final response on the matter, Mrs N's representatives wrote to this Service and expanded on the complaint. They said the timeshare agreement was null and void because Mrs N hadn't been provided with certain key information that the Timeshare, Holiday Products, Resale and Exchange Contract Regulations 2010 (that I'll call the "2010 Regs") required the timeshare company to supply to her.*

*Hitachi provided some comments from the timeshare provider, who explained that Mrs N's representative's view of the key information that needed to be supplied under Regulation 15 of the 2010 Regs was wrong, and that they had provided all of the requisite information to Mrs N ahead of the agreement in the "Information Statement".*

*As Mrs N didn't agree, the complaint has been passed to me, an ombudsman, to make a*

decision.

### **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 know it will disappoint Mrs N, but I'm not currently inclined to uphold her complaint. I'll explain why.*

*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). 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 final decision.*

*Many aspects of this complaint appear to have faded away over time. Mrs N's representatives most recent submission would suggest that the only point of dispute remaining is whether there was an unfair relationship under section 140A of the CCA because Mrs N hadn't been provided with the key information she should have been provided with under schedule 1 of the 2010 Regs.*

*I'll therefore deal with that issue first before briefly touching on the other points that have been raised in case they're still contested.*

### **Was Mrs N provided with the relevant key information?**

*Mrs N's representatives have suggested that the timeshare agreement is unenforceable under Regulation 15 of the 2010 Regs because the timeshare provider breached Regulation 12 by failing to provide the key information set out in Regulation 13 and detailed in Schedule 1. They say that as the key information wasn't supplied, Regulation 21 allows for an extension of Mrs N's withdrawal rights from 14 days to three months and 14 days. That being the case, they say a payment was made to the supplier when it shouldn't have been – contrary to the relevant timeshare regulations (Regulation 25).*

*Mrs N's representatives say that the details of the exact property and the season weren't supplied. But I agree with the timeshare provider who explained:*

*"No details of a unit location, unit size and unit number are required as the contract does not relate to an immovable property" and "the information concerning the exact period within which the right may be exercised and its duration is stated in the "Standard Information Form".*

*I think the key information set out in the Standard Information Form meets the requirements of the 2010 Regulations, and I don't, therefore, think an unfair relationship has been demonstrated or that Hitachi were wrong to reject that claim.*

### **The claim under the Consumer Credit Act 1974**

*When something goes wrong, and the payment was made with a certain type of fixed sum loan, as was the case here, it might be possible to make a section 75 claim. This section of the Consumer Credit Act (1974) says that in certain circumstances, the borrower under a credit agreement has the same right to make a claim against the credit provider as against the supplier if there's either a breach of contract or misrepresentation by the supplier.*

*From what I can see, all the necessary criteria for a claim to be made under section 75 have been met.*

*Section 56 of the CCA is also relevant to the claim under section 140A of the CCA as the pre-contractual acts or omissions of the broker 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 Mrs N and Hitachi.*

*It's not for me to decide the outcome of a claim Mrs N may have under sections 75 or 140A, but I'm required to take them into account when deciding whether Hitachi were reasonable to reject Mrs N's claims.*

### **Section 75 of the CCA**

*If Mrs N was given a false statement of fact or law, and if that false statement was a significant reason why she entered into the agreement, I may think the agreement had been misrepresented to her. In those circumstances, I may think Hitachi were unreasonable not to consider and uphold a claim under section 75.*

### **Resale**

*Whilst I understand it is Mrs N's suggestion she was wrongly told she could sell her points, I've not seen any other evidence to support that.*

*The "Information Statement" says:*

*Part 3.6.4 "There is no resale, rental or re-purchase of Points programme in place...although members are entitled to sell their Points on the open market should they wish to do..."*

*Mrs N signed the Information Statement, acknowledging receipt, and I'm persuaded that it's, therefore likely it was provided to her. So, I don't think Hitachi have been unreasonable to reject the suggestion Mrs N was given a false statement about being able to sell her points as I think a court would be likely to reach the same conclusion.*

### **Availability**

*Mrs N complained about poor availability of accommodation. It seems she's, therefore, suggesting she was told accommodation would have better availability, but Hitachi have explained Mrs N was always offered her first choice of accommodation and, regardless, the Owners Club Guide explains that:*

*"Reservations: All are subject to availability, on the principle of first come first served, and member and seasonal demands".*

*I don't, therefore, think there is sufficient evidence a false statement was provided about availability and, even if there was, I don't think Mrs N has been disadvantaged by it or that Hitachi have, therefore been unreasonable not to uphold her complaint in that regard.*

## **Section 140A of the CCA**

### **Was the timeshare and therefore the loan voidable?**

*If the timeshare agreement was voidable, I think it likely that the related loan was also voidable on the rescission of the agreement it was used to fund, and that's something that could be considered under a section 140A CCA claim.*

*Mrs N's representatives referred to an EU Directive, some Spanish legislation, and a Spanish court judgment that they said, taken together, demonstrated that a timeshare that provides for a 'floating week' or the ability to use points to book holidays with a provider, was a voidable agreement.*

*The timeshare agreement states that it is governed by English law, not Spanish law, so I don't think the Spanish judgment (which in any event relates to a different timeshare product to Mrs N's timeshare) could be applied directly to the question as to whether the contract is voidable under English law. Having read all of the relevant legislation, rules, and regulations, I can not see anything that would have the effect Mrs N's representative seek. In fact, in a recent House of Commons Library Briefing Paper, "Timeshares: common problems faced by UK owners", it was said that a 'floating week' or 'points'-based timeshare were basic timeshare models that were not described as being problems in and of themselves. Based on the evidence I have seen, I do not think the timeshare agreement nor the related credit agreement was voidable.*

### **Commission**

*Mrs N's representatives say Hitachi failed to disclose the commission paid. One of the main aims of both the 2010 Regs and the Unfair Terms in Consumer Contract Regulations 1999 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. If a supplier's disclosure and/or the terms of a bargain didn't 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 amount to unfairness under Section 140A.*

*However, the member's declaration which is signed by Mrs N explains:*

*"We have a commercial agreement with the lender who is providing the loan you have requested and as part of those commercial terms we are entitled to commission from the lender" and "Details of the commission in respect of your loan are available on request by you quoting your contract number".*

*I'm not therefore persuaded any unfair relationship was created as it seems Mrs N was put on notice that commission was being paid and was able to find out how much.*

### **Affordability**

*Mrs N says that Hitachi were in breach of its obligations to carry out an adequate credit assessment to determine whether she could afford to repay the loan. She says they had strict obligations to complete a creditworthiness check under the Financial Conduct Authority's (FCA's) Consumer Credit Sourcebook (CONC) and failed to undertake those obligations.*

*Hitachi have set out the checks they performed. I think they were reasonable and proportionate, in the circumstances. They've explained that they reviewed Mrs N's income*

*and validated it using statistical modelling. They looked at her credit file too, noting that she had no credit commitments. When considering Mrs N's likely expenditure, they took into account that she wasn't a homeowner and calculated her likely contribution to rent. Having done that Hitachi have explained that they established Mrs N was likely to have disposable income of over £2,000 a month from which they thought she'd be able to sustainably afford her monthly repayments towards this loan along with her annual maintenance fees.*

*I've not been provided with, or asked for, evidence of those checks, although I don't doubt Hitachi's explanation. But in the absence of any evidence from Mrs N to demonstrate the finance agreement wasn't affordable for her, I don't think I have sufficient evidence to say that was the case.*

### **My provisional decision**

*For the reasons I've given above I'm not expecting to uphold this complaint.*

### **Further comments and/or evidence**

Hitachi didn't provide any further comments or evidence, but Mrs N's representatives did.

They said the key information set out in Regulation 13 of the 2010 Regs and detailed in Schedule 1 – Part 3 – Section 2 (b) had not been provided, and that the Supplier had therefore committed an offence under Regulation 15, and the timeshare was unenforceable. They reiterated that as the key information hadn't been provided, Regulation 21 allowed for an extension of Mrs N's withdrawal rights from 14 days to three months and 14 days. That being the case, they said a payment was made to the supplier when it shouldn't have been – contrary to the relevant timeshare regulations (Regulation 25).

They said that the Supplier also breached the Consumer Protection from Unfair Trading ("CPUT") Regulations (2008) because it didn't provide the information set out in Regulation 13 of the 2010 Regs. They said that was a misleading omission because it omitted material information that could have caused Mrs N not to enter into the purchase of the timeshare.

### **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.

Schedule 1 – Part 3 – Section 2 of the 2010 Regs sets out some additional information that the timeshare consumer is entitled to. It says:

*"...where the contract concerns accommodation other than immovable property, an appropriate description of the accommodation and the facilities"*

The Standard Information Form isn't mute on that point. It says:

*"Please see the Facilities Sheets and the Vacation Club Members Guide and Directory."*

It is Mrs N's assertion that she didn't receive the Facilities Sheets and the Vacation Club Members Guide and Directory, and I've not seen a copy of that information. But I'm not persuaded it is likely Mrs N wasn't provided with that information as I can see she has been able to book accommodation, and in the absence of information about the accommodation available and its facilities I can't see how she would have been able to do so. I can also see links online to a club members area that explains it contains information on the resorts

available, and to facilities sheets which, although I accept may not be the ones in question, suggest it was likely these were available for Mrs N to draw upon.

I'm not persuaded by the additional comments Mrs N's representatives have supplied that there is reason to change my provisional decision. That 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 Mrs N to accept or reject my decision before 19 September 2023.

Phillip McMahon  
**Ombudsman**