

The complaint

Mr D complains about the sale of a timeshare product in February 2019. He says too that the services he bought are no longer available, following the placing into administration of the seller.

Because Mr D's purchase was funded in part with a loan from Hitachi Capital (UK) Plc (now Mitsubishi HC Capital UK Plc), Mr D says that it is liable to meet his claims against the seller. I'll refer to the lender as Hitachi Capital.

What happened

Mr D and his partner were existing timeshare owners. In February 2019 they bought from Club La Costa (UK) Plc ("CLC") a fractional interest in a timeshare property. They paid in part with a loan in Mr D's name from Hitachi Capital, and also traded in their existing timeshare.

A fractional timeshare is an arrangement by which members have the use of a designated property for a fixed period each year or, as in this case, every other year. After a fixed period of time, the property is sold and each member with an interest in it takes a share of the proceeds.

In September 2021 Mr D wrote to Hitachi Capital to demand the return of the money he had paid under the loan agreement and that the balance be written off. He said, in summary:

- The company which sold the timeshare product, CLC, was in administration and was no longer in a position to provide the services he had bought.
- The service had been misrepresented to him. Specifically, he had been told that the timeshare he had bought was worth significantly more than what was in fact the case.

Hitachi Capital said it responded to Mr D's complaint in a letter of 21 December 2021. That letter said, again in summary:

- It was not realistic to compare the price paid for the timeshare product with its resale value. It did not believe the product had been misrepresented.
- The terms of the loan, including the interest rate, had been clearly set out and Mr D had not been misled about it.
- Hitachi Capital did not accept Mr D's complaint and told him that he could refer the matter to the Financial Ombudsman Service, but that he needed to do so within six months.

In May 2022 Mr D wrote to Hitachi Capital again, to say that he had not received a response to his complaint and that he would be referring the matter to the Financial Ombudsman Service. He did so in February 2023.

Hitachi Capital said that Mr D should have referred his complaint to this service within six months of the letter of 21 December 2021. Because he had not done so, it said that this

service had no power to consider it. Mr D said he had not received the letter of 21 December 2021 and that he could not therefore refer his complaint to the service.

One of our investigators considered what had happened. She noted that the letter of 21 December 2021 had not addressed the complaint that CLC could not provide Mr D with the services he had purchased. She could therefore consider that part of his complaint. However, she agreed with Hitachi Capital that the other elements of the complaint had been referred to the service more than six months after the letter of 21 December 2021.

The investigator did not however recommend that the complaint arising from CLC's administration be upheld. She thought the evidence indicated that other companies were continuing to provide the services which Mr D had purchased.

Mr D did not accept the investigator's recommendation and asked that an ombudsman review the case. He repeated that he had not received the December 2021 letter. He said too that he expected the timeshare services to be provided by CLC and not a different company. He did not believe he would receive the same standard of service or the same product from anyone else.

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.

The Financial Ombudsman Service's power to consider the complaint

Under our rules, the Financial Ombudsman Service cannot generally consider a complaint which is referred to it more than six months after the date of the respondent's final response. So, the first issue I must consider is whether the letter of 21 December 2021 was a final response to all or any of the complaint which Mr D had made. To meet that definition, it must address the complaint made and either offer a resolution or explain why none is being offered. It must also tell the complainant that they can refer the matter to this service, provide details of how to do so, and explain that they have six months in which to make the referral.

I am satisfied that Hitachi Capital's letter of 21 December 2021 did that in respect of Mr D's complaints about the value of the timeshare and about the rate of interest on the loan. It did not however address his complaint about CLC being placed into administration. I'll return to the effect of that.

An ombudsman can disregard the time limit referred to above if the failure to refer the complaint in time was the result of exceptional circumstances. Mr D has mentioned two matters which might be exceptional circumstances. He says that he did not receive Hitachi Capital's letter and that he has been seriously unwell.

I accept that non-receipt of a final response could be an exceptional circumstance which might justify an extension of the usual time limit. I think however that it is more likely than not that Hitachi Capital's final response was safely delivered to Mr D. It was properly addressed, including the postcode. Whilst some post goes missing, the vast majority does not.

I note that Mr D chased for a response in May 2022 – before the time limit had expired – but did not receive one. That is consistent with the final response not having been received, but it's also consistent with it having been overlooked. And it would have been helpful if Hitachi Capital had replied to that letter referring back to its final response. I do not believe however that its failure to do so is a reason to disregard the time limit.

I note that Mr D says he did not refer his complaint to this service because he understood from our website that he needed a final response letter. In fact, as our website explains:

“If you haven’t received a response to your complaint within eight weeks, you can also refer your complaint to us.”

I have considered too what Mr D has said about his health. I accept what he has told me about that, but I am not persuaded that it was his health that caused the delay in referring his complaint to us. I note that he was able to communicate with Hitachi Capital in May 2022, so there seems to have been no impediment to referring the matter to this service. And, when the issue of the time limit was first raised, he did not refer to his health; he said only that he had not received the final response.

For these reasons, I believe this part of Mr D’s complaint was referred to us outside the relevant time limit and that I have no power to consider it.

Breach of contract claim

As I have indicated, the final response letter did not address Mr D’s complaint resulting from the administration of CLC. Hitachi Capital accepts that and has agreed that this service can consider that element of the complaint.

One effect of section 75(1) of the Consumer Credit Act 1974 is that a customer who has a claim for breach of contract against a supplier can, subject to certain conditions, bring that claim against a lender. Those conditions include:

- that the lending financed the contract giving rise to the claim; and
- that the lending was provided under pre-existing arrangements or in contemplation of future arrangements between the lender and the supplier.

I do not understand Hitachi Finance to dispute that the loan was made under pre-existing arrangements between it and CLC, the seller of the timeshare. I have therefore considered what Mr D has been said about the administration of CLC.

The CLC group of companies has said that CLC was part of its sales group. It and other sales companies within the group are no longer trading, but club memberships and other services are provided by other companies. Mr D’s ability to use the timeshare unit in the weeks he bought is unchanged, and he remains able to convert its use to points to take holidays elsewhere.

I accept in general that that is likely to be the case. It is not at all unusual for timeshare properties to be sold by one entity, while responsibility for the operation and management of resorts lies with another.

I am not persuaded that Mr D’s contract required services to be provided by the seller, CLC. That would be very unusual. And in any event, it does not seem to me that Mr D has suffered, or will suffer, any loss if those services are provided by a different company. He has not provided any evidence to show that, since the administration, he has received a reduced or inferior service from that which he received previously or for which he contracted.

I stress that it is not for me to say whether Mr D has a claim for breach of contract against CLC or whether he has a like claim against Hitachi Capital. In deciding what’s fair and reasonable, however, I must have regard to any relevant law, including section 75 of the Consumer Credit Act. Having done that, however, I think that Hitachi Capital’s response to Mr D’s claim was fair.

My final decision

For these reasons, my final decision is not to uphold Mr D's complaint, and I don't require Mitsubishi HC Capital UK Plc to take any further steps to resolve it.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 10 October 2023.

Mike Ingram
Ombudsman