

The complaint

Mr P's complaint is, in essence, that Mitsubishi HC Capital UK Plc trading as Novuna the 'Lender') acted unfairly and unreasonably by deciding against paying a claim under Section 75 of the Consumer Credit Act 1974 ('CCA')

Background to the complaint

Mr P purchased membership of a timeshare (the 'Timeshare') from a timeshare provider (the 'Supplier') on 28 November 2018 (the 'Time of Sale'). He and his partner, Mrs P, entered into an agreement with the Supplier to become members of its Fractional Club, which provided them with 1,300 points that they could exchange for holiday accommodation and a share in an allocated property. The Fractional Club membership cost £17,433 (the 'Purchase Agreement').

Mr P paid for the Fractional Club by taking finance with the Lender (the 'Credit Agreement') for the full amount. As the loan agreement is in his sole name, he is the eligible complaint, so I will mainly refer to only Mr P in my decision.

Mr P – using a professional representative (the 'PR') – wrote to the Lender on 24 April 2019 the 'Letter of Complaint'. In full, this reads:

"Our clients were on holiday in Milton Keynes [...] and were subjected to a long sales pitch asking them to buy into this organisation They firmly declined[.]

As an incentive they were given a holiday week in Tenerife (flights not included) which turned out to be a promotional week for [the Supplier] at Monterey Bay resort. They were extremely impressed with this Resort and were told categorically that, if they purchased the [Supplier's] package of Fractional Points, they would definitely be able to holiday at Monterey Bay every year on dates suitable to them They signed up for this package at Resort Paradise paying £17433 on [28 November 2018]. They queried the Resort name but were told by the agent that they could definitely change this by booking at Monterey Bay Resort They were also told that the annual Maintenance fees would never increase[.]

They returned to Tenerife in March 2019 and shown into a "Signature Suite" which was nothing like the one they were shown on the initial visit They have also discovered, through talking to other disgruntled members, that availability at Monterey Bay was very poor and it was very difficult to book a holiday at that resort. They were also informed that the maintenance fees, which they were assured by the agent would not increase, did in fact, increase annually[.]

Our clients feel that they were mis-sold this product in view of the lies told by the sales people and they request a full return of their £17433 under Section 75 of the Consumer Credit Act of 1974.

We enclose all relevant documents and signed Letter of Authorisation[.]"

The Lender dealt with Mr P's concerns, both as a claim under s.75 CCA and as a complaint,

and issued its final response letter on 17 October 2022, rejecting it on every ground.

Mr P then referred the complaint to the Financial Ombudsman Service. It was assessed by an Investigator who, having considered the information on file, rejected the complaint on its merits.

Mr P disagreed with the Investigator's assessment and asked for an Ombudsman's decision – which is why it was passed to me.

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.

And having done that, I do not think this complaint should be upheld.

But before I explain why, I have made my decision on the balance of probabilities – which means I have based it on what I think is more likely than not to have happened given the available evidence and the wider circumstances.

Section 75 of the CCA: the Supplier's misrepresentations at the Time of Sale

The CCA introduced a regime of connected lender liability under Section 75 that affords consumers ("debtors") a right of recourse against lenders that provide the finance for the acquisition of goods or services from third-party merchants ("suppliers") in the event that there is an actionable misrepresentation and/or breach of contract by the supplier.

In short, a claim against the Lender under Section 75 essentially mirrors the claim Mr P could make against the Supplier.

Certain conditions must be met if the protection afforded to consumers is engaged, including, for instance, the cash price of the purchase and the nature of the arrangements between the parties involved in the transaction. The Lender does not dispute that the relevant conditions are met in this complaint. And as I'm satisfied that Section 75 applies, if I find that the Supplier is liable for having misrepresented something to Mr P at the Time of Sale, the Lender is also liable.

The complaint was made for several reasons that I set out at the start of this decision. While I recognise that Mr P has concerns about the way in which the Fractional Club membership was sold to him and Mrs P, he hasn't persuaded me that there was an actionable misrepresentation by the Supplier at the Time of Sale for any of the reasons he alleges. I'll explain why I've reached that conclusion.

Regarding Mr P's point that he was told the maintenance fees would not increase, I have not been shown any evidence or testimony to support this allegation. But I note that he and Mrs P surrendered their membership several months after the Time of Sale, and before the first annual fee payment was due. And I can see that the "Information Statement" document contains the following information:

"Charges will be budgeted annually and will be subject to increase or decrease as determined by the costs of managing the Project and are payable annually in advance each year".

So, I think it is very unlikely that the Supplier's sales representatives told Mr P that the fees would remain the same as this is directly contradicted by the paperwork and there is insufficient evidence to support this allegation.

As for the allegation that Mr P wasn't able to use his membership in the way he was promised, I have not been presented with any testimony from Mr P to help me understand why he felt the Fractional Club membership was misrepresented to him.

The Supplier says that he and Mrs P surrendered the membership as they were both ill and could no longer use the membership. It says that Mr and Mrs P never attempted to book a holiday using the membership. It says they were shown the "Signature" suite during the promotional holiday, not in a subsequent visit. And it says that Mr P has misidentified the resort he and Mrs P stayed in during the promotional holiday.

Looking at the Letter of Complaint, both of Mr P's main allegations – that there was poor availability at one of the resorts, and that the annual fees increased – are based on what he has heard other customers say, not on his own experiences. So, I don't find the allegations in the Letter of Complaint to be plausible or persuasive.

What's more, as there's nothing else on file that persuades me there were any false statements of existing fact made to Mr P by the Supplier at the Time of Sale, I do not think there was an actionable misrepresentation by the Supplier for the reasons he alleges.

For these reasons, therefore, I do not think the Lender is liable to pay Mr P any compensation for the alleged misrepresentations of the Supplier. And with that being the case, I don't think the Lender acted unfairly or unreasonably when it dealt with the Section 75 claim in question.

Other matters

In response to the Investigator's view, the PR has asked me to consider the judgment in *Shawbrook & BPF v. FOS*¹, saying:

"We would like to take into consideration relating to the recent Judicial Review the circumstances that our clients entered into the Fractional Owners Club Scheme.

These new upgraded contracts did not offer any additional benefits to our clients and only continued the rights they already had but with shortened duration, our clients would have the Fractional Rent allocation should they wish to rent out within the asset back investment, with a shortened term to sell at the end of the term for large profit..."

The PR says there are problems with what happened as a result of this, and the upshot of this is that the relationship between Mr P and the Lender was rendered unfair.

Our service can only consider complaints that have first been raised with the Lender and I can't see that either the PR, or Mr P, have raised these concerns with the Lender to date. But, in the interests of helping the PR to better understand the circumstances of this complaint, Mr P did not upgrade an existing contract – he and Mrs P were new customers of the Supplier's when they made their purchase.

• ¹ *R (on the application of Shawbrook Bank Ltd) v Financial Ombudsman Service Ltd and R (on the application of Clydesdale Financial Services Ltd (t/a Barclays Partner Finance)) v Financial Ombudsman Service* [2023] EWHC 1069 (Admin) ('*Shawbrook & BPF v FOS*').

Mr P did not allege that the timeshare was sold to him as an investment until after he received the Investigator's findings. So, even if it was sold by the Supplier in that way, I don't think this could have caused an unfair relationship between him and the Lender as I just don't think this aspect of the Fractional Club membership was an important factor in his decision to enter the Purchase Agreement.

Conclusion

In conclusion, given the facts and circumstances of this complaint, I do not think that the Lender acted unfairly or unreasonably when it dealt with Mr P's Section 75 claim. And having taken everything into account, I see no other reason why it would be fair or reasonable to direct the Lender to compensate him.

My final decision

For the reasons set out above, I don't uphold Mr P's complaint about Mitsubishi HC Capital UK Plc trading as Novuna.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 31 July 2025.

Andrew Anderson
Ombudsman