DRN-4745616

The complaint

Mr M's complaint is, in essence, that Mitsubishi HC Capital UK Plc trading as Novuna Personal Finance (the 'Lender') acted unfairly and unreasonably by (1) being party to an unfair credit relationship with him under Section 140A of the Consumer Credit Act 1974 (as amended) (the 'CCA') and (2) deciding against paying a claim under Section 75 of the CCA.

What happened

Mr M was a member of a timeshare provider (the 'Supplier') – having purchased from it previously. But the product at the centre of this complaint is his membership of a timeshare that I'll call the 'Fractional Club' – which he bought on 27 June 2013 (the 'Time of Sale'). He entered into an agreement with the Supplier to buy 2,430 fractional points at a cost of £33,703 (the 'Purchase Agreement'). But, after trading in his existing membership, he ended up paying £4,570 for his Fractional Club membership.

Fractional Club membership was asset backed – which meant it gave Mr M more than just holiday rights. It also included a share in the net sale proceeds of a property named on the Purchase Agreement (the 'Allocated Property') after his membership term ends.

Mr M paid for his Fractional Club membership by taking finance of £4,570 from the Lender (the 'Credit Agreement'). This loan was paid off in full in January 2015.

Mr M – using a professional representative (the 'PR') – wrote to the Lender on 25 August 2021 (the 'Letter of Complaint') to raise a number of different concerns. As those concerns haven't changed since they were first raised, and as both sides are familiar with them, it isn't necessary to repeat them in detail here beyond the summary above.

The PR did not receive a response to that complaint within the eight-week period required by the regulator. So, they referred the matter to our Service.

At that stage, the Lender said they had never received the Letter of Complaint. So, they then logged the matter as a complaint on 17 April 2023.

The Lender issued its final response letter on 17 May 2023, rejecting it on every ground.

Mr M remained unhappy and so the complaint was then assessed by an Investigator at this Service who, having considered the information on file, concluded that while Mr M's Section 75 claim was within our Service's jurisdiction to consider, they felt the Lender likely had a valid defence to such a claim under the Limitation Act 1980 (the 'LA'). The Investigator also said they didn't feel that the PR's allegations relating to the authorisation of the credit broker and the Supplier's alleged breach of Spanish law were reasons to uphold the complaint. The Investigator also said that Mr M's complaint regarding an unfair credit relationship had been made too late in respect of the time limits for bringing a complaint under the Financial Conduct Authority (FCA) DISP rules. So, our Service could not consider that aspect of the complaint.

Mr M disagreed with the Investigator's assessment and asked for an Ombudsman's decision

– which is why it was passed to me.

At this stage, the PR provided some further comments. They said, in summary, that while the loan in question may have been paid off in January 2015, the Lender only wrote to Mr M to confirm this in January 2018. So, in their view, that is when the relevant credit relationship ended. They also provided some further comments as to why they thought the membership had been sold to Mr M as an investment at the Time of Sale.
I have dealt with whether our Service has jurisdiction to consider Mr M's complaint that the credit relationship between himself and the Lender was unfair to him under Section 140A of the CCA, in a separate decision.

This decision only considers the merits of Mr M's complaint about the way the Lender handled his claim under Section 75 of the CCA, his complaint about the Credit Agreement being arranged by an unauthorised credit broker and the Supplier's alleged breach of Spanish law.

The legal and regulatory context

In considering what is fair and reasonable in all the circumstances of the complaint, I am required under DISP 3.6.4R to take into account: relevant (i) law and regulations; (ii) regulators' rules, guidance and standards; and (iii) codes of practice; and (where appropriate), what I consider to have been good industry practice at the relevant time.

The legal and regulatory context that I think is relevant to this complaint is no different to that shared in several hundred published ombudsman decisions on very similar complaints – which can be found on the Financial Ombudsman Service's website. And with that being the case, it is not necessary to set out that context here.

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.

However, before I explain why, I want to make it clear that my role as an Ombudsman is not to address every single point that has been made to date. Instead, it is to decide what is fair and reasonable in the circumstances of this complaint. So, if I have not commented on, or referred to, something that either party has said, that does not mean I have not considered it.

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

In this part of Mr M's complaint, he is alleging that the Lender was unfair and unreasonable in refusing to allow his claim under Section 75 of the CCA. His complaint is that the Lender ought to have allowed it as there were misrepresentations made by the Supplier at the Time of Sale, and these misrepresentations induced him into making the purchase.

The Investigator in this case felt it would be reasonable for the Lender to reject this claim as they would have a defence to it under the LA.

Creditors can reasonably reject Section 75 claims that they're first informed about after the claim has become time-barred under the LA. The reason being, that it wouldn't be fair to expect creditors to look into such claims so long after the liability arose and after a limitation defence would be available in court.

Having considered everything, I agree with what the Investigator has said here. I think Mr M's claim for misrepresentation was likely to have been made too late under the relevant provisions of the LA, which means it would have been fair for the Lender to have turned down a Section 75 claim for this reason.

A claim under Section 75 is a 'like' claim against the creditor. A claim for misrepresentation against the Supplier would ordinarily be made under Section 2(1) of the Misrepresentation Act 1967. And the limitation period to make such a claim expires six years from the date on which the cause of action accrued, as per Section 2 of the LA.

But a claim like this one under Section 75 is also "an action to recover any sum by virtue of any enactment" under Section 9 of the LA. The limitation period under that provision is also six years from the date on which the cause of action accrued.

The date on which the cause of action accrued was the Time of Sale. I say this because Mr M entered into the membership at that time based on the alleged misrepresentations by the Supplier, which Mr M says he relied on. And, as the loan from the Lender was used to finance this membership, it was when Mr M entered into the Credit Agreement that he suffered a loss.

Mr M first notified the Lender of his Section 75 claim on 17 April 2023[1]. Since this was more than six years after the Time of Sale, I don't think the Lender acted unfairly or unreasonably when it rejected Mr M's concerns about the Supplier's alleged misrepresentations at the Time of Sale.

The complaint about the Credit Agreement being unenforceable because it was arranged by a credit broker that was not licenced by the Office of Fair Trading to carry out that activity

The PR has said that the Credit Agreement was arranged by an unauthorised credit broker, the upshot of which is to suggest that the Lender wasn't permitted to enforce the Credit Agreement. However, it looks to me like Mr M knew, amongst other things, how much he was borrowing and repaying each month, who he was borrowing from and that he was borrowing money to pay for Fractional Club membership. So, even if the Credit Agreement was arranged by a broker that didn't have the necessary permission to do so (which I make no formal finding on), I can't see why that led to Mr M's financial loss – such that I can say that this complaint should be upheld as a result. And with that being the case, I'm not persuaded that it would be fair or reasonable to tell the Lender to compensate him, even if the loan wasn't arranged properly.

The Supplier's alleged breach of Spanish Law and its implications on the Credit Agreement

The PR argues that, because the Purchase Agreement was unlawful under Spanish law in light of certain information failings by the Supplier, I should treat that Agreement and the Credit Agreement as rescinded by Mr M and award him compensation accordingly – in keeping with the judgment of the UK's Supreme Court in *Durkin v DSG Retail* [2014] UKSC 21 ('*Durkin*').

[1] I acknowledge the PR wrote to the Lender on 25 August 2021 to complain but as I've explained above, the Lender did not receive this. But, even if they had, this is still more than six years from the Time of Sale.

However, as the Lender hasn't been party to any court proceedings in Spain, it seems to me that there is an argument for saying that the Purchase Agreement is valid under English law for the purposes of *Durkin*.

I also note that the Purchase Agreement is governed by English law. So, it isn't at all clear that Spanish law would be held relevant if the validity of the Purchase Agreement were litigated between its parties and the Lender in an English court. For example, in *Diamond Resorts Europe and Others* (Case C-632/21), the European Court of Justice ruled that, because the claimant lived in England and the timeshare contract was governed by English law, it was English law that applied, not Spanish, even though the latter was more favourable to the claimant in ways that resemble the matters seemingly relied upon by the PR.

What's more, as Mr M has gone some way to taking advantage of the Purchase and Credit Agreements, an English court might hesitate to uphold a claim for rescission of either Agreement because there are equitable reasons to do so.

Overall, therefore, in the absence of a successful English court ruling on a timeshare case paid for using a point-of-sale loan on similar facts to this complaint, and given the facts and circumstances of this complaint, I'm not persuaded that it would be fair or reasonable to uphold it for this reason.

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 M'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

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 29 December 2025.

Fiona Mallinson
Ombudsman