

The complaint

Mr R's complaint is, in essence, that Mitsubishi HC Capital UK PLC (the 'Lender') acted unfairly and unreasonably by (1) being party to an unfair credit relationship with them under Section 140A of the Consumer Credit Act 1974 (as amended) (the 'CCA'), (2) lending irresponsibly and (3) deciding against paying a claim under Section 75 of the CCA.¹

What happened

Mr R purchased membership of a timeshare (the 'Fractional Club') from a timeshare provider (the 'Supplier') on 30 October 2013 (the 'Time of Sale'). He entered into an agreement with the Supplier to buy 1,500 fractional points at a cost of £9,900 (the 'Purchase Agreement').

Mr R paid for his Fractional Club membership by taking finance of £10,694 from the Lender (the 'Credit Agreement'). The additional amount was used to pay off a loan used to purchase an earlier timeshare.

Mr R – using a professional representative (the 'PR') – wrote to the Lender on 3 October 2022 (the 'Letter of Complaint') to raise several different concerns. Since then, the PR has raised some further matters it says are relevant to this outcome of the complaint. As both sides are familiar with the concerns raised, it isn't necessary to repeat them in detail here beyond the summary above.

The Lender dealt with Mr R's concerns as a complaint and issued its final response letter on 22 December 2022, rejecting it on every ground.

The complaint was then referred to the Financial Ombudsman Service. It was assessed by an Investigator who, having considered the information on file, said points (1) and (2) above were outside of our jurisdiction because they were referred too late. And that the remainder of the complaint was rejected on its merits.

Mr R disagreed with the Investigator's assessment and asked for an Ombudsman's decision – which is why it was passed to me. The PR has since confirmed it accepts the Investigator's findings on our jurisdiction. So, in this decision I only need to consider point (3) above, concerning the Lender's response to the Section 75 claim.

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.

I've decided not to uphold this complaint, for the same reasons as our Investigator.

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

¹ The PR also raised concerns about Fractional Club membership being an Unregulated Collective Investment Scheme, the interest paid on the loan and undisclosed commission but has since accepted that these concerns would not lead to this complaint being upheld.

As a general rule, creditors can reasonably reject Section 75 claims that they are first informed about after the claim has become time-barred under the Limitation Act 1980 (the 'LA') as 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. So, it is relevant to consider whether Mr R's Section 75 claim for misrepresentation was time-barred under the LA before he put it to the Lender. As I mentioned above, a claim under Section 75 is a "like" claim against the creditor. It essentially mirrors the claim Mr R could make against the Supplier.

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 (see Section 2 of the LA). But a claim, like the one in question here, under Section 75 is also 'an action to recover any sum by virtue of any enactment' under Section 9 of the LA. And 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 R entered the purchase of his timeshare at that time based on the alleged misrepresentations of the Supplier – which he says were relied upon. And as the loan from the Lender was used to help finance the purchase, it was when he entered into the Credit Agreement that he suffered a loss.

Mr R first notified the Lender of his Section 75 claim on 3 October 2022. And as more than six years had passed between the Time of Sale and when that claim was first put to the Lender, I don't think it was unfair or unreasonable of the Lender to reject Mr R's concerns about the Supplier's alleged misrepresentations.

I have considered Sections 14 and 32 of the Limitation Act but am not persuaded these provided Mr R with more time to make his Section 75 claim.

My final decision

For the reasons I've explained, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 12 March 2026.

Phillip Lai-Fang
Ombudsman