

The complaint

Mr K's complaint is, in essence, that Mitsubishi HC Capital UK Plc trading as Novuna Personal Finance ("Novuna") acted unfairly and unreasonably by (1) participating in an unfair credit relationship with him under Section 140A of the Consumer Credit Act 1974 (the "CCA"), (2) deciding against paying a claim under Section 75 of the CCA and (3) lending irresponsibly having failed to conduct the required affordability checks.

What happened

Mr K purchased a trial timeshare product (the "Trial Timeshare") from a timeshare supplier (the "Supplier") on or around 25 September 2010 (the "Time of Sale 1"). The purchase price agreed was £3,795 (the "Purchase Agreement 1"), which was funded under a fixed-sum loan agreement with the Lender ("Credit Agreement 1").

Mr K traded in the Trial Membership towards the purchase of a full timeshare membership (the "Points Membership") on 17 November 2010 (the "Time of Sale 2"). He entered into an agreement with the Supplier to buy 1,000 membership points ("Purchase Agreement 2") at a cost of £17,154. But after trading in his existing Trial Membership, he ended up paying £11,154 for the Points Membership.

Mr K paid for his Points Membership by taking finance of £13,721 under a fixed-sum loan agreement with the Lender ("Credit Agreement 2"). Full repayment of Credit Agreement 1 was included within this figure resulting in the eventual closure of Credit Agreement 1 on 30 December 2010.

Credit Agreement 2 was subsequently repaid and closed on 8 October 2012.

For simplicity, I may refer throughout this decision to:

- The Trial Timeshare and the Point Membership as the "Timeshare Products".
- The Time of Sale 1 and the Time of Sale 2 as "the Time of each Sale".
- Purchase Agreement 1 and Purchase Agreement 2 as the "Purchase Agreements".
- Credit Agreement 1 and Credit Agreement 2 as the "Credit Agreements".

Over the course of the following years, Mr K raised various concerns and complaints with the Supplier about the Points Membership he had purchased. In particular, he thought that the Supplier had misrepresented the Points Membership to him and initially wanted it to address problems he was experiencing with his membership. However, as Mr K's concerns weren't resolved, he sought to terminate his membership and recover the costs associated with its purchase.

During that period, Mr K engaged the services of a professional representative (the "PR") in Spain to assist him with the cancellation of his membership and recovery of the funds he'd spent. The PR told Mr K it would take legal action through the Spanish courts on his behalf to achieve that. However, Mr K was unsuccessful in securing cancellation and a refund.

On 15 May 2024, Mr K contacted the Lender to complain about the timeshare products he had purchased from the supplier. He highlighted various allegations of misrepresentations made together with concerns about the Suppliers sales practices at the Time of each Sale. Mr K also didn't think the Supplier (and hence the Lender) had completed appropriate

checks and tests when deciding whether the Credit Agreements were appropriate and affordable for him.

The Lender considered Mr K's concerns as complaints under sections 75 and 140A of the CCA. Having done so, the Lender thought Mr K's complaint had been brought to them too late under the various rules and legislation that applies. Furthermore, it noted that Mr K had not experienced any difficulty in repaying his loans and in any event, thought this complaint had also been brought too late under the rules that apply.

Mr K didn't accept the Lender's findings, so referred his complaint to the Financial Ombudsman Service. Having considered all the evidence and information available, one of this service's investigators didn't think Mr K's complaint should be upheld. In particular, the investigator thought:

- Mr K's complaint suggesting the Lender's participation in a credit relationship that was unfair to him wasn't within the Financial Ombudsman Service's jurisdiction because it wasn't made in time under the limits set out in Rule 2.8.2 R (2) of the Financial Conduct Authority's (the "FCA") Dispute Resolution Rules ("DISP");
- Mr K's complaint suggesting the Lender's decision to lend to him was irresponsible also wasn't within the Financial Ombudsman Service's jurisdiction because it wasn't made in time under the limits set out in DISP 2.8.2 R (2) and in any event, there was nothing to suggest the loans were unaffordable;
- Mr K's complaint about the Lender's decision to reject his concerns about the supplier's alleged misrepresentations was made in time under DISP 2.8.2 R (2). But the Lender didn't act unfairly or unreasonably by not upholding them.

Mr K didn't accept the investigator's findings. In particular, he argues that he had already raised his concerns with the Supplier well within the timescales that apply. He also engaged a PR in Spain to pursue his claim through the Spanish Courts albeit attempts were unsuccessful. So, Mr K's argument is essentially that he acted as soon as he found out that he could and in doing so, he had sought legal advice from the PR.

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.

Having done that, I've decided that the Financial Ombudsman Service does not have the jurisdiction to consider Mr K's complaint about Mitsubishi HC Capital UK Plc trading as Novuna Personal Finance participation in and/or continuation of an unfair credit relationship under Section 140A of the CCA. And I've also decided this service does not have the jurisdiction to consider any separate complaint relating to the lending checks undertaken by it. I've explained my reasons for that in a separate decision.

Therefore, this decision specifically addresses Mr K's complaint about the Lender unfairly deciding against paying a claim under Section 75 of the CCA.

Relevant considerations

When considering what's fair and reasonable, DISP¹ 3.6.4R of the FCA Handbook means I'm required to take into account; relevant law and regulations, relevant regulatory rules, guidance and standards and codes of practice; and, where appropriate, what I consider was good industry practice at the relevant time.

¹ Dispute Resolution: Complaints Sourcebook ("DISP")

The CCA introduced certain protections that afforded consumers (like Mr K) a right of recourse against lenders that provide the finance for the acquisition of goods or services (like the timeshare products purchased) from suppliers.

The concerns Mr K has about the sale of the products he purchased only constitute a complaint that the Financial Ombudsman Service has the authority to consider if those concerns are considered with at least one of those provisions of the CCA in mind.

S75 provides protection to consumers for goods or services bought using credit. Mr K paid for the Timeshare Products under new Credit Agreements with the Lender specifically for that purpose. So, it isn't in dispute that S75 applies here – subject to any restrictions and limitations. So, where the requirements of the CCA are met, it means Mr K is afforded the protection offered to borrowers like him under those provisions. As a result, I've taken this section into account - together with any related provisions within the CCA - when deciding what's fair in the circumstances of this case.

Given the facts of Mr K's complaint, relevant law also includes the Limitation Act 1980 (the "LA"). This is because the original transactions - the purchases funded by the Credit Agreements with the Lender - took place in September and November 2010. Only a court is able to make a ruling under the LA, but as it's relevant law, I've considered any effect this might also have.

I want to make it clear that I've based my decision on what I think is more likely than not to have happened given the evidence that's available from the time and the wider circumstances. When doing that, my role isn't to address every single point that's been made. So, I'm only going to refer to what I believe are the most salient points having considered everything that's been said and provided by both sides.

Mr K's S75 complaint

S75 operates quite differently to S140A and, when it applies, it can give borrowers a very different ground for complaint against a lender. Whereas S140A imposes responsibilities on creditors in relation to the fairness of their credit relationships, S75 simply creates a financial liability that the creditor (the Lender) is bound to pay. Liability under S75 isn't based upon anything the lender does wrong. Rather upon misrepresentations and breaches of contract by the Supplier. S75 imposes on the lender a "like claim" to that which the borrower enjoys against the supplier. If the lender is notified of a valid S75 claim, it should pay its liability. And if it fails or refuses to do so, that can give rise to a complaint to this service.

So, when a complaint is referred to this service on the back of an unsuccessful S75 claim, the act or omission that engages this service's jurisdiction is the creditor's refusal to accept or pay the debtor's claim. This is distinct from anything that occurred before the claim was made such as the supplier's alleged misrepresentation(s) and/or breach(es) of contract.

Was Mr K's S75 complaint made in time?

As far as Mr K's S75 complaint is concerned, the six- and three-year time limits (under DISP 2.8.2 (2) R) don't usually start until the respondent firm answers and refuses the claim. Here, the Lender refused to accept and reimburse Mr K under the claim initiated in May 2024. So, the primary time limit of six years only started once the Lender responded – here that was in writing on 26 June 2024. And as this complaint about the Lender's handling of Mr K's complaint was referred to this service in October 2024, it was made in time for the purpose of the rules on this service's jurisdiction.

So, having decided this service is able to consider this aspect of Mr K's complaint, I've considered the allegations and circumstances further.

Mr K's misrepresentation complaint under S75

Having done so, I don't think it would be fair or reasonable to uphold Mr K's complaint for reasons relating to the S75 misrepresentation claim. As a general rule, creditors can

reasonably reject S75 claims that they are first informed about after the claim has been time-barred under the LA. It wouldn't be fair to expect creditors to look into such claims so long after the liability first arose and after a limitation defence would be available in court. So, it's relevant to consider whether Mr K's S75 claim was time-barred under the LA before it was put to the Lender.

As I've explained, a claim under S75 is a "like" claim against the creditor. It essentially mirrors the claim Mr K 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 under S75, like this one, 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 here was the Time of each Sale. I say this because Mr K entered into the purchase of the Timeshare Products at those times based upon the alleged misrepresentations of the Supplier – which Mr K says he relied upon. And as the Credit Agreements with the Lender provided funding to help finance those purchases, it was when he entered into the Credit Agreements that he allegedly suffered the loss.

Mr K first notified the Lender of his S75 complaint in May 2024. And as substantially more than six years had passed between the Time of each Sale and when the complaint was first put to the Lender, I don't think it was ultimately unfair or unreasonable of the Lender to reject his concerns about the Supplier's alleged misrepresentations.

I acknowledge that Mr K did raise his concerns directly with the Supplier far earlier. And in doing so, he had engaged the PR to assist him in addressing those concerns and seeking cancellation of the Timeshare Products whilst securing redress for the associated costs. However, the complaint being considered here is the Lender's failure to uphold Mr K's S75 claim. So crucially, it is the timing of that claim that is key here rather than any claim or complaint made directly to the Supplier.

I appreciate that Mr K will be very disappointed, but I will not be asking the Lender to do anything more.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 13 March 2025.

Dave Morgan
Ombudsman