

The complaint

Mr D'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 ('CCA').
- (2) Deciding against paying a claim made under Section 75 of the CCA.
- (3) Providing finance to him via an unauthorised credit intermediary.

What happened

Mr D purchased membership of a timeshare (the 'Fractional Club') from a timeshare provider (the 'Supplier') on 17 September 2014 (the 'Time of Sale'). They entered into an agreement with the Supplier to buy 1,200 fractional points at a cost of £12,494 (the 'Purchase Agreement').

Fractional Club membership was asset backed – which meant it gave Mr D 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 D paid for their Fractional Club membership by taking finance of £12,494 from the Lender (the 'Credit Agreement').

Complaint

Mr D – using a professional representative (the 'PR') – wrote to the Lender on 8 November 2021 (the 'Letter of Complaint') to raise several 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 Lender dealt with Mr D's concerns as a complaint and issued its final response on 29 December 2021, rejecting it on every ground.

Referral to the Financial Ombudsman Service

The complaint was referred to the Financial Ombudsman Service on 5 April 2022. It was assessed by an Investigator who, having considered the information on file, said part of it was outside of the jurisdiction of the Financial Ombudsman Service and, considering the merits of the remainder of the complaint, did not uphold it.

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

I previously issued a decision explaining that I could not look into complaint point (1) above, since it was referred to the Financial Ombudsman Service outside of the time limits allowed in the relevant rules. And that provisionally I was not upholding complaint points (2) and (3).

The PR confirmed receipt of the decision, but neither the PR, Mr D nor the Lender provided anything further for me to consider. So, this final decision deals with the merits of complaint points (2) and (3) and is in line with my provisional.

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 so, I've decided not to uphold this complaint – for the same reasons given in my provisional decision, which I repeat below.

Section 75 complaint

I don't think it would be fair or reasonable to uphold this complaint. 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 'Limitation Act'). This is because it wouldn't be fair to expect creditors to investigate 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 D's Section 75 claim was time-barred under the Limitation Act before he put it to the Lender.

A claim under Section 75 is a "like" claim against the creditor. It essentially mirrors the claim the consumer 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 Limitation Act).

But a claim under Section 75 is also 'an action to recover any sum by virtue of any enactment' under Section 9 of the Limitation Act. 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 D entered the purchase of his timeshare at that time based on the alleged misrepresentations of the Supplier – which he says he relied on. 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 D first notified the Lender of his Section 75 claim on 8 November 2021. And as more than six years had passed between the Time of Sale and when he first put his claim to the Lender, I don't think it was unfair or unreasonable of the Lender to reject Mr D's concerns about the Supplier's alleged misrepresentations.

Complaint about the Lender providing finance via an unauthorised credit intermediary

The PR alleges that the Credit Agreement was arranged by an unauthorised credit intermediary, the upshot of which is to suggest that the Lender wasn't permitted to enforce the Credit Agreement.

The Lender says that the credit intermediary was authorised at the Time of Sale, although it appears that the wrong company name was written on the Credit Agreement in error. In any case, Mr D 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. And as the lending doesn't look like it was unaffordable for Mr D, even if the Credit Agreement was arranged by a credit intermediary that didn't have the necessary

permission to do so (which I make no formal finding on), I can't see why that caused Mr D a financial loss such that it would be fair and reasonable to tell the Lender to compensate Mr D, even if the loan wasn't arranged properly.

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 D to accept or reject my decision before 17 September 2025.

Phillip Lai-Fang
Ombudsman