DRN-5710102

The complaint

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

What happened

Mr F purchased a timeshare on 7 October 2013 (the 'Time of Sale') from a third party (the 'Supplier'). He used a loan from the Lender (the 'Credit Agreement') to help pay for the timeshare before repaying the Credit Agreement in full on 27 May 2014.

Mr F – using a professional representative ('PR') – contacted this service on 19 October 2022 after having complained to the Lender on 21 July 2022 about:

1. Misrepresentations by the Supplier at the Time of Sale giving him a claim under Section 75 of the CCA, which the Lender failed to accept and pay.
2. The Lender's participation in an unfair credit relationship under the Credit Agreement and related timeshare agreement for the purposes of Section 140A of the CCA.
3. The Credit Agreement being unenforceable because it was not arranged by a credit broker regulated by the Financial Conduct Authority (the 'FCA') to carry out such an activity.

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

Mr F says that the Supplier made a number of pre-contractual misrepresentations at the Time of Sale – namely that the Supplier:

1. told him that he was buying a share in a specific property when that was not true.
2. told him that Fractional Club membership was an "investment" and would appreciate in value when that was not true.
3. told him that he could sell the product back to the Supplier or easily sell it at a profit when that was not true.
4. made him believe that he would have access to 'the holiday's apartment' at any time, all year round.

Mr F says that he has a claim against the Supplier in respect of one or more of the misrepresentations set out above, and therefore, under Section 75 of the CCA, he has a like claim against the Lender, who, with the Supplier, is jointly and severally liable to Mr F.

(2) Section 140A of the CCA: the Lender's participation in an unfair credit relationship

The Letter of Complaint set out a number of reasons for why Mr F says the credit relationship between him and the Lender was unfair to him under Section 140A of the CCA. In summary, they include the following:

1. Fractional Club membership was marketed and sold to him as an investment in breach of regulation 14(3) of the Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010 (the 'Timeshare Regulations').
2. The contractual terms setting out the Supplier's ability to forfeit his membership and all the money he had paid for it if he failed to make payments, such as his management fees, were unfair contract terms.
3. The decision to lend was irresponsible because the Lender didn't carry out the right creditworthiness assessment.

The Lender dealt with Mr F's concerns as a complaint and issued its final response letter on 23 August 2022 rejecting the Section 75 claim on the basis that there was a defence to the complaint under the Limitation Act 1980 (the 'LA'). The Lender also didn't uphold the complaint about Section 140A.

Mr F 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 about Section 75 on its merits. The Investigator felt that the complaint about Section 140A hadn't been made in time as per the rules that this service must follow and that it couldn't be considered.

Mr F disagreed with the Investigator's assessment and asked for an Ombudsman's decision – which is why it was passed to me. I've already issued a decision explaining what parts of the complaint this service can and can't consider. In summary, I didn't think the Financial Ombudsman Service had the jurisdiction to consider Mr F's complaint about the Lender's participation in and/or perpetuation of an unfair credit relationship under Section 140A of the CCA.

Insofar as Mr F's complaint about the Lender's decision to decline his Section 75 claim for misrepresentation and the credit broker being unauthorised was concerned, I thought those parts of the complaint were in jurisdiction. I said I'd consider the merits of those aspects of the complaint, and set out my findings on them, in a separate decision. I've done so in this final decision.

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 conclude that the Lender didn't act unfairly or unreasonably by coming to the decision that it did to reject Mr F's concerns about the Supplier's alleged misrepresentations under Section 75 of the CCA and the credit broker not being authorised by the relevant regulator.

I'll explain my reasons for my conclusions below.

Mr F's complaint that the credit broker was not authorised

The PR says 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.

According to, for example, the CCA the Supplier provided to Mr F at the Time of Sale, the credit broker was a business I'll refer to as 'CRD'. Whereas the Purchase Agreement references another business, which I'll refer to as 'PT'.

I accept that CRD wasn't licensed by the relevant regulator at that time – the Office of Fair Trading (OFT). However, I can see from the Financial Ombudsman Service's internal records that PT was licensed by the OFT – probably to broker credit given its only other role as a business was to sell timeshares. And as it was PT that was involved in the relevant sale, rather than CRD, on the balance of probabilities, I think it's more likely than not that PT brokered the Credit Agreement rather than CRD (the naming of which on the Credit Agreement strikes me as an administrative error) when the former was licensed by the OFT and the latter wasn't.

But even if I'm wrong to make that finding, if the Credit Agreement was unenforceable under the OFT's regulatory regime because it was arranged by a business that wasn't licenced to do so, as I understand it, there was no automatic entitlement to what was paid under an unenforceable agreement when that regime was in place[1]. What's more, I can't see that Mr F suffered any detriment even if the Credit Agreement was arranged by a business that wasn't licenced to do so. Mr F 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 it doesn't look like the lending was unaffordable for him. So, even if the Credit Agreement was arranged by a business that didn't have the necessary permission, I can't see why that led to Mr F's financial loss. 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.

Mr F's Section 75 Complaint

Section 75 of the CCA creates a financial liability that the creditor is bound to pay. Liability under Section 75 isn't based on anything the lender does wrong, but upon the misrepresentations and breaches of contract by the supplier, for which Section 75 imposes on the lender a "like claim" to that which the borrower enjoys against the supplier. If the lender is notified of a valid Section 75 claim, it should pay its liability. And if it fails or refuses to do so, that failure or refusal can give rise to a complaint to the Financial Ombudsman Service.

So, when a complaint is referred to the Financial Ombudsman Service on the back of an unsuccessful attempt to advance a Section 75 claim, the act or omission that engages the Service's jurisdiction is the creditor's refusal to accept and pay the debtor's claim – rather than anything that occurs before the claim was put to the creditor, such as the supplier's alleged misrepresentation(s) and/or breach(es) of contract.

As a result, the six and three-year time limit (under DISP 2.8.2 (2) R) to complain about an unsuccessful attempt to initiate a Section 75 claim doesn't usually start until the respondent firm answers and refuses the claim.

In this case, as the Lender refused to accept and pay Mr F's claim on 23 August 2022, his primary time limit (of six years) only started at that time. And the complaint about the Lender's handling of that claim was referred to the Financial Ombudsman Service in time for the purpose of the rules on our jurisdiction.

However, as I've already indicated, I don't think it would be fair or reasonable to uphold this complaint for reasons relating to Mr F's Section 75 claim. 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 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

[1] https://www.fca.org.uk/firms/validation-orders

court. So, it is relevant to consider whether Mr F's Section 75 claim 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 F 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 F entered into 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 F first notified the Lender of his Section 75 claim in July 2022. 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 F's concerns about the Supplier's alleged misrepresentations.

The PR has argued that the limitation period can be extended in the case of concealment or fraud. There are provisions within the LA to extend limitation periods in such circumstances, however the PR's arguments on this point focus on the Section 140A part of the complaint, and that part of the complaint falls outside this service's jurisdiction for the reasons already explained in my separate decision on that matter. And I don't think the PR's arguments assist the claim in relation to misrepresentation, because the concealment of the product being an investment would be inconsistent with the allegation that the Supplier had falsely told Mr F the product was an investment.

My final decision

For the reasons set out above, I don't uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 20 August 2025.

Nimish Patel
Ombudsman