

## **The complaint**

Mr H's complaint is, in essence, that Mitsubishi HC Capital UK PLC ('the Lender'), acted unfairly and unreasonably by (1) deciding against paying a claim made under Section 75 of the Consumer Credit Act 1974 ('CCA'), (2) being party to an unfair credit relationship with him under Section 140A of the CCA, (3) lending to him irresponsibly, (4) providing a loan brokered by an unauthorised credit intermediary, and (5) the loan being provided for a purchase agreement that is null and void.

## **What happened**

Mr H purchased membership of a timeshare (the 'Fractional Club') from a timeshare provider (the 'Supplier') on 29 April 2012 (the 'Time of Sale'). He entered into an agreement with the Supplier to buy 1,050 fractional points at a cost of £13,949 (the 'Purchase Agreement').

Fractional Club membership was asset backed – which meant it gave Mr H 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 H paid for their Fractional Club membership by taking finance of £13,949 from the Lender (the 'Credit Agreement'). Mr H paid off the loan, and his credit relationship with the Lender ended on 1 July 2014.

Mr H – using a professional representative (the 'PR') – wrote to the Lender on 16 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 H's concerns as a complaint and issued its final response on 29 December 2021, 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 that the complaint about an unfair credit relationship was outside of the jurisdiction of the Financial Ombudsman Service, and the other aspects of the complaint should not be upheld.

Mr H disagreed with the Investigator's assessment and asked for an Ombudsman's decision – which is why it was passed to me. I issued a decision explaining that complaint point (2) above was outside of my jurisdiction, and that provisionally I was not upholding the remainder of the complaint.

Neither Mr H, the PR, nor the Lender provided anything else for me to consider by the deadline given. So, this final decision deals with the merits of complaint points (1), (3), (4) and (5) above, and is in line with my provisional 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.

For the reasons given in my provisional decision, which are repeated below, I do not uphold this complaint.

#### Complaint about the Lender's rejection of Mr H'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 Limitation Act 1980 (the 'Limitation Act'). This is because 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 H'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 H 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 H first notified the Lender of his Section 75 claim on 16 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 H's concerns about the Supplier's alleged misrepresentations.

#### Complaint about irresponsible or unaffordable lending

The PR says that the right checks weren't carried out before the Lender lent to Mr H. But I haven't seen anything to persuade me that was the case in this complaint given its circumstances, nor that the money lent to Mr H was unaffordable. So, from the information provided, I am not satisfied that the lending was irresponsible or unaffordable at the Time of Sale.

#### Complaint about the credit being brokered by an unauthorised credit intermediary

The PR alleges 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, I can see from the Financial Conduct Authority's Interim Permission Register for Consumer Credit that, at the Time of Sale, the credit intermediary named on the Credit Agreement held a Consumer Credit License through the Office of Fair Trading that included permission to act as a Credit Brokerage. So, it appears that the credit intermediary held the necessary authorisation when it brokered the credit.

In addition to this, Mr H 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 H, even if the Credit Agreement was arranged by a broker that didn't have the necessary permission to do so (which does not appear to be the case), I can't see why that caused Mr H a financial loss – such that it would be fair and reasonable to tell the Lender to compensate Mr H, even if the loan wasn't arranged properly.

### Complaint about the Purchase Agreement being null and void

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

However, the Spanish court judgement provided is not in respect of the Purchase Agreement, but Mr H's 2015 purchase.

As the Lender wasn't party to any court proceedings in Spain, and as I can't see that the Supplier (i.e. the company that entered into the Purchase Agreement) is the subject of a Spanish court judgment in Mr H's favour in relation to the Purchase Agreement, it seems to me that there is an argument for saying 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 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 H 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, I'm not persuaded that it would be fair or reasonable to uphold this complaint for this reason.

### **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 H to accept or reject my decision before 18 September 2025.

Phillip Lai-Fang  
**Ombudsman**