DRN-5749113

The complaint

Mrs H'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'), (2) being party to an unfair credit relationship with her under Section 140A of the CCA and (3) providing a loan brokered by an unauthorised credit intermediary.

What happened

Mrs H purchased a timeshare on 26 January 2015 (the 'Time of Sale') from a third party (the 'Supplier'). She used a loan from the Lender (the 'Credit Agreement') to help pay for the timeshare before repaying the Credit Agreement in full on 1 June 2015.

Mrs H – using a professional representative ('PR') – contacted this service on 14 July 2022 after having complained to the Lender on 20 January 2022 about:

1. Misrepresentations by the Supplier at the Time of Sale giving her 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

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

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

Mrs H says that she 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, she has a like claim against the Lender, who, with the Supplier, is jointly and severally liable to Mrs H.

(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 Mrs H says the credit relationship between her and the Lender was unfair to her under Section 140A of the CCA. In summary, they include the following:

1. Fractional Club membership was marketed and sold to her 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 her membership and all the money she had paid for it if he failed to make payments, such as her 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 Mrs H's concerns as a complaint and issued its final response letter on 10 February 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.

Mrs H then referred the complaint to the Financial Ombudsman Service. It was assessed by an Investigator who, having considered the information on file, ultimately rejected the complaint about Section 75 and the credit broker 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.

Mrs H 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 Mrs H's complaint about the Lender's participation in and/or perpetuation of an unfair credit relationship under Section 140A of the CCA.

Insofar as Mrs H's complaint about the Lender's decision to decline her 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 Mrs H'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.

Mrs H'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 Mrs H 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 'CRS'.

I accept that CRD wasn't authorised by the relevant regulator at that time – the FCA. However, I can see from the Financial Ombudsman Service's internal records and FCA records provided by the Lender that CRS was granted interim permission by the FCA to broker credit. And as it was CRS that was involved in the relevant sale, rather than CRD, on the balance of probabilities, I think it's more likely than not that CRS brokered the Credit Agreement rather than CRD (the naming of which on the Credit Agreement strikes me as an administrative error) when the former had been granted interim permission by the FCA and the latter hadn't.

But even if I'm wrong to make that finding, if the Credit Agreement was unenforceable under the FCA's regulatory regime because it was arranged by a business that was acting outside the scope of its permission, 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 Mrs H suffered any detriment even if the Credit Agreement was arranged by a business that was acting outside the scope of its permission. Mrs H knew, amongst other things, how much she was borrowing and repaying each month, who she was borrowing from and that she was borrowing money to pay for Fractional Club membership. And it doesn't look like the lending was unaffordable for her. 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 Mrs H'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 her, even if the loan wasn't arranged properly.

Mrs H'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 Mrs H's claim on 10 February 2022, her 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 Mrs 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

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

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 court. So, it is relevant to consider whether Mrs H'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 Mrs H 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 Mrs H entered into the purchase of her timeshare at that time based on the alleged misrepresentations of the Supplier – which she says she relied on. And as the loan from the Lender was used to help finance the purchase, it was when she entered into the Credit Agreement that she suffered a loss.

Mrs H first notified the Lender of her Section 75 claim in January 2022. And as more than six years had passed between the Time of Sale and when she first put her claim to the Lender, I don't think it was unfair or unreasonable of the Lender to reject Mrs H'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 Mrs H 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 Mrs H to accept or reject my decision before 9 September 2025.

Nimish Patel
Ombudsman