DRN-5782345

The complaint

Mr G's complaint is, in essence, that Mitsubishi HC Capital UK Plc trading as Novuna Personal Finance ('the Lender'), acted unfairly and unreasonably by

(1) Being party to an unfair credit relationship with him 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 the loan through an unauthorised credit intermediary.

(4) Lending to Mr G irresponsibly.

What happened

Mr G purchased membership of a timeshare (the 'Fractional Club') from a timeshare provider (the 'Supplier') on 4 May 2015 (the 'Time of Sale'). Mr G paid for his Fractional Club membership by taking finance from the Lender (the 'Credit Agreement'). Mr G paid off the loan, and his credit relationship with the Lender ended, on 16 November 2015.

Mr G – using a professional representative (the 'PR') – wrote to the Lender on 30 September 2022 (the 'Letter of Complaint') to raise several different concerns. As those concerns have not changed since they were first raised, and as both sides are familiar with them, it is not necessary to repeat them in detail here beyond the summary above.

The Lender dealt with Mr G's concerns as a complaint and issued its final response on 24 October 2022, rejecting it on every ground.

The complaint was referred to the Financial Ombudsman Service on 20 December 2022. It was assessed by an Investigator who, having considered the information on file, said that the complaint about an unfair credit relationship and about irresponsible lending was outside of the jurisdiction of the Financial Ombudsman Service, and the remainder of the complaint should not be upheld.

Mr G 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 only look at complaint points (2) and (3) above due to the remainder of the complaint being made too late under the rules I must apply. As such, this final decision deals with the complaint about the Lender deciding against paying a claim made under Section 75 of the CCA and providing the loan through an unauthorised credit intermediary.

The legal and regulatory context

In considering what is fair and reasonable in all the circumstances of the complaint, I am required under DISP 3.6.4R to take into account: relevant (i) law and regulations; (ii) regulators' rules, guidance and standards; and (iii) codes of practice; and (where appropriate), what I consider to have been good industry practice at the relevant time.

The legal and regulatory context that I think is relevant to this complaint is no different to that shared in several hundred published ombudsman decisions on very similar complaints – which can be found on the Financial Ombudsman Service's website. And with that being the case, it is not necessary to set out that context here.

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.

I've decided not to uphold this complaint. Before I explain why, I want to make it clear that my role as an Ombudsman is not to address every single point that has been made to date. Instead, it is to decide what is fair and reasonable in the circumstances of this complaint. So, if I have not commented on, or referred to, something that either party has said, that does not mean I have not considered it.

Complaint about the Lender's rejection of Mr G's Section 75 claim

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. 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 G'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 G 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 G first notified the Lender of his Section 75 claim on 30 September 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 G's concerns about the Supplier's alleged misrepresentations.

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, Mr G 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 G, even if the Credit Agreement was arranged by a broker 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 G a financial loss – such that it would be fair and reasonable to tell the Lender to compensate Mr G, 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 G to accept or reject my decision before 30 September 2025.

Phillip Lai-Fang
Ombudsman