

The complaint

Mr S'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 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) Providing lending to pay for a contract that is null and void.
- (5) Lending to Mr S irresponsibly.

What happened

Mr S purchased membership of a timeshare (the 'Fractional Club') from a timeshare provider (the 'Supplier') on 3 December 2013 (the 'Time of Sale'). Mr S paid for this by taking finance from the Lender (the 'Credit Agreement'). Mr S paid off the loan, and his credit relationship with the Lender ended, on 28 February 2014.

Mr S – using a professional representative (the 'PR') – wrote to the Lender on 9 June 2022 (the 'Letter of Complaint') to raise a number of 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 S's concerns as a complaint and issued its final response on 6 July 2022, rejecting it on every ground.

The complaint was referred to the Financial Ombudsman Service on 19 October 2022. 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 remainder of the complaint should not be upheld.

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

I issued a jurisdiction decision explaining that I could only consider the part of the complaint about complaint point (2) above – the Lender deciding against paying a claim made under Section 75 of the CCA. This was because the remainder of the complaint was made too late under the rules I must apply. So, this final decision only deals with the merits of the Section 75 complaint.

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 S'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 S'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 S 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 Mr S entered into the Credit Agreement that he suffered a loss.

Mr S first notified the Lender of his Section 75 claim on 9 June 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 S's concerns about the Supplier's alleged misrepresentations.

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 S to accept or reject my decision before 1 October 2025.

Phillip Lai-Fang
Ombudsman