

The complaint

Mrs W'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 her under Section 140A of the Consumer Credit Act 1974 (as amended) (the 'CCA').
2. Deciding against paying a claim under Section 75 of the CCA.
3. Providing a loan brokered by an unauthorised credit intermediary.

Background to the complaint

Mrs W and her husband Mr W were members of a timeshare provider (the 'Supplier') – having purchased a number of products from it over time. But the product at the centre of this complaint is their membership of a timeshare that I'll call the 'Fractional Club' – which they bought on 20 November 2012 (the 'Time of Sale'). They entered into an agreement with the Supplier to buy 4,140 fractional points which, after trading in their existing membership, cost £9,624 (the 'Purchase Agreement').

Mrs W paid for their Fractional Club membership by taking finance of £9,624 from the Lender (the 'Credit Agreement'). She settled the Credit Agreement with the Lender on 6 February 2015. As Mrs W was the only borrower named on the Credit Agreement, this complaint has been brought in her name only.

Mrs W – using a professional representative (the 'PR') – wrote to the Lender on 9 March 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 Mrs W's concerns as a complaint and issued its final response letter on 27 April 2022, 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, thought the service could not consider Mrs W's complaint about an unfair credit relationship because it had been made too late, and while the remainder of the complaint had been made in time, it should not be upheld.

Mrs W disagreed with the Investigator's assessment and asked for an Ombudsman's decision. So, the complaint was passed to me to decide.

I've already issued a decision explaining what parts of Mrs W's complaint the Financial Ombudsman Service has jurisdiction to consider, those parts being only (2) and (3) from the summary above. This final decision deals with the merits of these parts of her 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.

Having done that, I've decided not to uphold this complaint for broadly the same reasons as our Investigator did. 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's 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.

In considering what's fair and reasonable in all the circumstances of the complaint, I'm required under DISP 3.6.4 R 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.

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

The CCA introduced a regime of connected lender liability under Section 75 that affords consumers ("debtors") a right of recourse against lenders that provide the finance for the acquisition of goods or services from third-party merchants ("suppliers"), in the event that there is an actionable misrepresentation and/or breach of contract by the supplier.

Certain conditions must be met if the protection afforded to consumers is engaged, including, for instance, the cash price of the purchase and the nature of the arrangements between the parties involved in the transaction. The Lender doesn't dispute that the relevant conditions are met. But for reasons I'll come on to below, it isn't necessary to make any formal findings on them here.

In general, lenders 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 "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 have been available in court. So it's relevant to consider if Mrs W's Section 75 claim was time-barred under the LA before it was put to the Lender.

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. Any claim against a lender under Section 75 is also "*an action to recover any sum by virtue of any enactment*" under Section 9 of the LA. Such claims also have a time limit of six years from the date the cause of action accrued.

In claims for misrepresentation, the cause of action accrues at the point a loss is incurred. In Mrs W's case, that was at the Time of Sale because she entered into the agreement to purchase Fractional Club membership, and the related Credit Agreement to finance the purchase, based on the alleged misrepresentations of the Supplier which she says she relied on.

Mrs W first notified the Lender of her Section 75 claim on 9 March 2022. As that was more than six years after the Time of Sale, I don't think it was unfair or unreasonable of the Lender to reject the part of her claim relating to the Supplier's alleged misrepresentations.

The PR has argued that the LA includes provisions for the extension of the limitation period in the case of concealment or fraud. It says the Supplier concealed the sale of Fractional Club membership as an investment and that Mrs W only discovered this in November 2020 when her case was reviewed by a lawyer.

However, the PR's arguments here focus on Mrs W's unfair credit relationship complaint, and that part of her complaint falls outside the jurisdiction of this service for the reasons I explained in my earlier decision on that matter. Moreover, to the extent that the PR's arguments do relate to Mrs W's misrepresentation claim, I don't find they are of assistance because they are inconsistent with the allegations made in Mrs W's complaint that the Supplier represented membership to her as an investment. Therefore I'm not persuaded there was concealment in Mrs W's case such that the limitation period for bringing her misrepresentation claim could be extended.

Provision of a loan brokered by an unauthorised credit intermediary

The PR has argued 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.

Even if the credit intermediary that brokered the Credit Agreement did not hold the relevant licence¹ at the Time of Sale (which I make no formal finding on) and the agreement was therefore unenforceable, this didn't provide Mrs W with a right to recover the money she paid under the agreement.²

Furthermore, it looks to me like Mrs W 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 as the lending doesn't look like it was unaffordable for her, even if the Credit Agreement was arranged by a broker that didn't have the necessary permission to do so, I can't see why that led to Mrs W experiencing financial loss. With all of 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.

My final decision

For the reasons I've explained, it's my final decision that I do not uphold Mrs W's complaint about Mitsubishi HC Capital UK PLC.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs W to accept or reject my decision before 27 November 2025.

Asa Burnett
Ombudsman

¹ Before 1 April 2014, the licencing of credit brokers was the responsibility of the Office of Fair Trading.

² <https://www.fca.org.uk/firms/validation-orders>