

The complaint

Mr S'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 (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.
4. Refusing a claim for rescission of the credit agreement that financed a supply agreement that has been declared null and void.

Background to the complaint

Mr S and his wife Mrs S 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 14 July 2013 (the 'Time of Sale'). They entered into an agreement with the Supplier to buy 747 fractional points at a cost of £10,999 (the 'Purchase Agreement').

Mr S paid for their Fractional Club membership by taking finance of £10,999 from the Lender (the 'Credit Agreement'). He settled the Credit Agreement with the Lender on 29 October 2013. As Mr S was the only borrower named on the Credit Agreement, this complaint has been brought in his name only.

Mr S – using a professional representative (the 'PR') – wrote to the Lender on 7 September 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 letter on 14 November 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 Mr S'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.

Mr S 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 Mr S's complaint the Financial Ombudsman Service has jurisdiction to consider, those parts being (2), (3) and (4) from the summary above. This final decision deals with the merits of these parts of his 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's 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 Mr S'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 Mr S's case, that was at the Time of Sale because he 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 he says he relied on.

Mr S first notified the Lender of his Section 75 claim on 7 September 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 his 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 Mr S only discovered this in 2020 when his case was reviewed by a lawyer.

However, the PR's arguments here focus on Mr S's unfair credit relationship complaint, and that part of his 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 Mr S's misrepresentation claim, I don't find they are of assistance because they are inconsistent with the allegations made in Mr S's complaint that the Supplier represented membership to him as an investment. Therefore I'm not persuaded there was concealment in Mr S's case such that the limitation period for bringing his 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 licence at the Time of Sale¹ (which I make no formal finding on) and the agreement was therefore unenforceable, this didn't provide Mr S with a right to recover the money he paid under the agreement, or compensation for loss.²

Furthermore, it looks to me like Mr S 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 him, 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 Mr S 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 him, even if the loan wasn't arranged properly.

Claim for rescission of the Credit Agreement

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

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>

However, as the Lender hasn't been 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 itself the subject of a Spanish court judgment in Mr S's favour, it seems to me that there is an argument for saying that 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 was 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.

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, and given the facts and circumstances of this complaint, I'm not persuaded that it would be fair or reasonable to uphold it for this reason.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 9 December 2025.

Asa Burnett
Ombudsman