

The complaint

Mr D'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') and (2) deciding against paying a claim under Section 75 of the CCA.

What happened

Mr D (together with his wife) purchased membership of a timeshare (the 'Fractional Club') from a timeshare provider (the 'Supplier') on 6 May 2015 (the 'Time of Sale'). He entered into an agreement with the Supplier to buy 1,200 fractional points at a cost of £12,521 (the 'Purchase Agreement').

Fractional Club membership was asset backed – which meant it gave Mr D more than just holiday rights. It also included a share in the net sale proceeds of a property named on the Purchase Agreement (the 'Allocated Property') after the membership term ends.

Mr D paid for Fractional Club membership by taking finance in his sole name of £12,521 from the Lender (the 'Credit Agreement'). Because of that, Mr D is the only eligible claimant (and hence complainant) under the Credit Agreement. All amounts due under the Credit Agreement were repaid in June 2016.

Mr D – using a professional representative (the 'PR') – wrote to the Lender on 13 March 2023 (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 D's concerns as a complaint and issued its final response letter on 30 March 2023, rejecting it on the basis it had been submitted too late under the provisions of the Limitation Act 1980 (the 'LA').

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 complaint suggesting the Lender's participation in a credit relationship that was unfair to Mr D and the decision to lend was irresponsible was not within the Financial Ombudsman Service's jurisdiction because it wasn't made in time under the limits set out in Rule 2.8.2 R (2) of the Financial Conduct Authority's (the "FCA") Dispute Resolution Rules ("DISP");
- the complaint about the Lender's decision not to accept Mr D's concerns about the supplier's alleged misrepresentations was made in time under DISP 2.8.2 R (2). But the Lender didn't act unfairly or unreasonably by not upholding it;
- there was no evidence to support the allegation that the Supplier didn't hold the necessary regulatory authorisation to introduce the Credit Agreement with the Lender; and
- the complaint that due to the liquidation of the supplier, Mr D is unable to recover any sums awarded by a Spanish court does not appear relevant to the complaint raised

and could not see how it could have resulted in unfairness in the relationship between Mr D and the Lender.

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

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 decided that the Financial Ombudsman Service's jurisdiction does not permit me to consider the merits of Mr D's complaint about the Lender's participation in an unfair relationship and the Lender's alleged failure to complete affordability checks because there weren't referred to this service within the time limits set out in DISP 2.8.2 R (2). I've explained my reasons for that in a separate decision.

However, I also decided that Mr D's complaint under Section 75 of the CCA was made in time for the purpose of the rules on this service's jurisdiction. I've also explained my reasons for that in the aforementioned decision. However, having considered that part of Mr D's complaint further, I will not be upholding it.

Mr D's misrepresentation complaint under Section 75

As a rule, creditors can reasonably reject Section 75 claims that they are first informed about after the claim has been time-barred under the LA. It wouldn't be fair to expect creditors to look into such claims so long after the liability first arose and after a limitation defence would be available in court. So, it's relevant to consider whether Mr D's Section 75 claim was time-barred under the LA before it was put to the Lender.

A claim under Section 75 is a "like" claim against the creditor. It essentially mirrors the claim Mr D 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 under Section 75, like this one, 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 here was the Time of Sale. I say this because Mr D entered into the purchase of the Fractional Club membership at that time based upon the alleged misrepresentations of the Supplier – which Mr D says he relied upon. And as the Credit Agreement with the Lender provided funding to help finance that purchase, it was when he entered into the Credit Agreement that he allegedly suffered the loss.

The PR first notified the Lender of Mr D's Section 75 complaint in March 2023. And as more than six years had passed between the Time of Sale and when the complaint was first put to the Lender, I don't think it was ultimately unfair or unreasonable of the Lender to reject his concerns about the Supplier's alleged misrepresentations.

Could the limitation period be postponed?

The PR argues that the limitation period should be extended under Section 32 of the LA because facts relevant to Mr D's claim were deliberately concealed.

Section 32(1)(b) applies when “*any fact relevant to the plaintiff's right of action has been deliberately concealed from him by the defendant*” [my emphasis]. But the PR hasn't provided me with any persuasive evidence to demonstrate that the Supplier deliberately concealed anything in relation to the various allegations that Mr D wouldn't have realised well before the claim was submitted. And as I still can't see why, given the allegations fuelling the claim, these particular issues prevented Mr D from making a claim or - at the very least - raising a complaint earlier, my view is that this particular argument by the PR doesn't help Mr D's cause.

Based upon my findings above, I'm not persuaded that there's any reason why a court might decide time could be extended in keeping with the provisions of Section 32 of the LA.

Having decided that the Lender's response to Mr D's Section 75 complaint ultimately appears to have been fair and reasonable, I then went on to consider the other complaint points raised by the PR on Mr D's behalf. My findings are as follows:

The credit broker's authorisation

The PR believes 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, it looks to me like Mr D 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. So, 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 led to Mr D suffering financial loss – such that I can say that it would be fair or reasonable to tell the Lender to compensate him, even if the loan wasn't arranged properly.

Insolvency of the Supplier and its implications under the Credit Agreement

The PR argues that, because the Supplier, together with various associated businesses, entered into a liquidation procedure in December 2020, Mr D is not able to recover any amount that is expected to be awarded by a Spanish court.

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 D's favour, it seems to me that there is an argument for saying that the Purchase Agreement remains valid under English law for the purposes of the ruling set out in *Durkin v DSG Retail* [2014] UKSC 21.

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.

Conclusion

I've decided that Mr D's complaint under Section 75 of the CCA does fall within this services jurisdiction to consider. However, having done that, I don't think the Lender acted unfairly or unreasonably in rejecting it. I have also found no other reason why Mr D's complaint should be upheld.

My final decision

For the reasons set out above, I do not uphold Mr D's complaint about Mitsubishi HC Capital UK Plc trading as Novuna Personal Finance.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 8 January 2026.

Dave Morgan
Ombudsman