

## **The complaint**

Mrs P'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 her 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 and Mrs P 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 15 May 2013 (the 'Time of Sale'). They entered into an agreement with the Supplier to buy 1,290 fractional points at a cost of £19,241 (the 'Purchase Agreement').

Fractional Club membership was asset backed – which meant it gave Mr and Mrs P 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 their membership term ends.

Mr and Mrs P paid for their Fractional Club membership by trading in an existing timeshare and by taking finance of £8,740 from the Lender (the 'Credit Agreement') in Mrs P's sole name. As she is the sole borrower, Mrs P is the person eligible to make this complaint.

Mrs P settled her loan on 23 January 2014.

Mrs P – using a professional representative (the 'PR') – wrote to the Lender on 5 August 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 P's concerns as a complaint and issued its final response letter on 22 September 2022, rejecting it as having been made too late.

The complaint was then referred to the Financial Ombudsman Service. It was assessed by an Investigator who, having considered the information on file, concluded that the complaint had been made too late for this Service to consider.

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

I set out my initial thoughts on this complaint in a provisional decision. I have dealt with whether our Service has jurisdiction to consider Mrs P's complaint that the credit relationship between her and the Lender was unfair under Section 140A of the CCA in a separate decision.

My provisional decision set out my reasons for not intending to uphold the remaining aspects of Mrs P's complaint concerning her Section 75 claim to the Lender; her complaint about the

Credit Agreement being arranged by an unauthorised credit broker and her allegation that the Lender did not carry out affordability checks before lending to her.

Neither party had anything further to add in response to my provisional decision, so the complaint has come back to me.

### **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 ombudsman decisions on very similar complaints. 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.

And having done that, I do not think this complaint should be upheld.

Neither party has commented on the findings I made in my provisional decision, nor have they provided further submissions for me to consider. Consequently, I see no reason to deviate from the conclusions I reached on the matter in my provisional decision. I set those out below.

However, before I do so, 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.

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

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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.

The misrepresentations set out to form the basis of Mrs P's Section 75 claim occurred in May 2013 – at the Time of Sale. However, the actual activity being complained about is the Lender's refusal to accept and pay Mrs P's claim.

The Lender rejected Mrs P's claim on 22 September 2022, and the complaint was referred to the Financial Ombudsman Service the following month. Therefore, this aspect of the complaint is one which I can consider.

However, like our Investigator, I don't think it would be fair and reasonable to uphold this complaint for reasons relating to Mrs P's Section 75 claim. 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 1980 '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 be available in court. So, it is relevant to consider whether Mrs P's Section 75 claim was time-barred under the LA before she 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 LA).

But a claim, like the one in question here, under Section 75 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 was the Time of Sale. That's because Mrs P entered into the Purchase Agreement at that time based on the alleged misrepresentations of the Supplier – which she says she relied on. And as the loan from the Lender was used to help finance the purchase, it was when she entered into the Credit Agreement that she suffered a loss.

Mrs P first notified the Lender of this Section 75 claim on 5 August 2022. And as more than six years had passed between the Time of Sale (15 May 2013) and when she first put her claim to the Lender, I don't think it was unfair or unreasonable of the Lender to reject Mrs P's concerns about the Supplier's alleged misrepresentations.

#### *The other aspects of Mrs P's complaint*

It seems possible that the complaint Mrs P has made that the Lender did not carry out appropriate checks before lending to her would also be out of time. However, in any event I haven't seen anything to persuade me the Lender failed to do everything it should have when it agreed to lend. But even if I were to find that was the case (and I make no such finding), I would have to be satisfied that the money lent to Mrs P was actually unaffordable before also concluding that she lost out as a result. But from the information provided, I am not satisfied that the lending was unaffordable for Mrs P.

Connected to this is the suggestion by the PR 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 Mrs P 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 (which I make no formal finding on), I can't see why that led to a financial loss to Mrs P. And with 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.

Conclusion

In conclusion, given the facts and circumstances of this complaint, I do not think that the Lender acted unfairly or unreasonably when it dealt with Mrs P's Section 75 claim. And having taken everything into account, I see no other reason why it would be fair or reasonable to direct the Lender to compensate her.

### **My final decision**

I do not uphold this complaint about Mitsubishi HC Capital UK PLC.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs P to accept or reject my decision before 12 January 2026.

Claire Poyntz  
**Ombudsman**