

## **The complaint**

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

## **What happened**

Mr and Mrs H purchased membership of a timeshare (the 'Fractional Club') from a timeshare provider (the 'Supplier') on 3 July 2013 (the 'Time of Sale'). They entered into an agreement with the Supplier to buy 1,620 fractional points at a cost of £25,904 (the 'Purchase Agreement').

Fractional Club membership was asset backed – which meant it gave Mr and Mrs H 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.

After trading in an earlier timeshare Mr and Mrs H paid for their Fractional Club membership by taking finance of £9,393 from the Lender (the 'Credit Agreement'). As the loan is in Mr H's sole name, he is the complainant in this case.

Mr H's loan was settled in full on 21 July 2014.

Mr H – using a professional representative (the 'PR') – wrote to the Lender on 8 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 Mr H's concerns as a complaint and issued its final response letter on 7 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 rejected the complaint.

Mr H 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 thoughts on this complaint in a provisional decision. I have dealt with whether our Service has jurisdiction to consider Mr H's complaint that the credit relationship between him 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 Mr H's complaint concerning his Section 75 claim to the Lender; his complaint about the Credit Agreement being arranged by an unauthorised credit broker and the allegation that the Lender did not carry out affordability checks before lending to Mr H.

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 which I set 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**

---

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.

I don't think it would be fair and reasonable to uphold this complaint for reasons relating to Mr H'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 '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 Mr H's Section 75 claim was time-barred under the LA 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 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 – 3 July 2013. That’s because Mr H entered into the Purchase Agreement 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 he entered into the Credit Agreement that he suffered a loss.

Mr H first notified the Lender of his Section 75 claim on 8 March 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 H’s concerns about the Supplier’s alleged misrepresentations.

#### *The other aspects of Mr H’s complaint*

It seems possible that the complaint Mr H has made that the Lender did not carry out appropriate checks before lending to him 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 Mr H was actually unaffordable before also concluding that he lost out as a result. But from the information provided, I am not satisfied that the lending was unaffordable for Mr H.

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 Mr H 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 (which I make no formal finding on), I can’t see why that led to a financial loss to Mr H. And with 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.

#### *Conclusion*

In conclusion, given the facts and circumstances of this complaint, I do not think that the Lender acted unfairly or unreasonably when it did not accept Mr H’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 him.

#### **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 Mr H to accept or

reject my decision before 21 January 2026.

Claire Poyntz  
**Ombudsman**