

The complaint

Mrs M'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 M purchased membership of a timeshare (the 'Fractional Club') from a timeshare provider (the 'Supplier') on 8 June 2015 (the 'Time of Sale'). They 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 and Mrs M 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 M paid for their Fractional Club membership by taking finance of £12,521 from the Lender (the 'Credit Agreement'). The finance was taken out in Mrs M's sole name and as a result she is the eligible complainant in this case.

Mrs M's loan was settled on 13 June 2016.

Mrs M – using a professional representative (the 'PR') – wrote to the Lender on 31 January 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 complaint was then brought to the Financial Ombudsman Service on 27 March 2023. At that time the PR told this Service it had re-submitted Mrs M's complaint to the Lender on 31 August 2022 but said that the Lender had not acknowledged either communication or issued a final response letter.

We forwarded details of Mrs M's complaint to the Lender who informed us that it hadn't previously seen the complaint. The Lender then dealt with Mrs M's concerns as a complaint and issued its final response letter on 9 May 2023, it said that parts of Mrs M's complaint had been made too late and it rejected other aspects of the complaint.

The complaint was then referred to the Financial Ombudsman Service in June 2023. The Lender informed this service that Mrs M's Section 140A complaint had been made too late for our service to consider under the Limitation Act 1980 (LA). The complaint was assessed by an Investigator who, having considered the information on file, rejected the complaint on its merits.

Mrs M disagreed with the Investigator's assessment and asked for an Ombudsman's decision – which is why it was passed to me. Since then, the PR contacted the Investigator

saying that the Supplier did not disclose that the Lender paid it commission in breach of the Regulator's rules.

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

Neither party had anything further to add in response to my provisional decision, so the complaint has come back to me. My final decision will cover the remaining aspects of Mrs M's complaint.

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.

Mrs M's Section 75 claim

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.

Mrs M's representative tells us that they initially made a claim on behalf of Mrs M in January 2022. Ultimately, the Lender provided Mrs M with its response to her claim on 9 May 2023 in which it denied the claim.

Mrs M's representative contacted our service on 22 June 2023 to inform us that a response had been received and to ask us to investigate Mrs M's complaint.

The misrepresentations set out forming Mrs M's Section 75 claim occurred in 2015 – at the Time of Sale. However, the actual activity being complained about is the Lender's refusal to accept and pay Mrs M's claim which occurred on 9 May 2023.

Mrs M's Section 75 complaint has been made within six years of that refusal. And so, Mrs M's Section 75 claim is one this service 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 M'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 Mrs M's Section 75 claim was time-barred under the LA before she put it to the Lender.

In short, a claim against the Lender under Section 75 essentially mirrors the claim Mrs M could make against the Supplier.

A claim under Section 75 is a 'like' claim against the creditor. 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, as per Section 2 of the LA.

But a claim like this one under Section 75 is also "*an action to recover any sum by virtue of any enactment*" under Section 9 of the LA. 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 for the claim was the Time of Sale, which was 8 June 2015. I say this because Mrs M entered into the membership at that time based on the alleged misrepresentations by the Supplier, which she says she relied on. And, as the loan from the Lender was used to finance this membership, it was when Mrs M entered into the Credit Agreement, on 8 June 2015, that she suffered a loss.

The PR says they first notified the Lender of Mrs M's Section 75 claim on 31 January 2022. As I've set out, the Lender says they were first notified of the claim in April 2023. In both cases, this was more than six years after the Time of Sale. As such I don't think it was unfair or unreasonable of the Lender to reject Mrs M's concerns about the Supplier's alleged misrepresentations.

The other aspects of Mrs M's complaint

It seems possible that the complaint Mrs M 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 M 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 M.

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 M 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 M. 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.

Mrs M's Commission complaint

While I've found previously that the complaint that Mrs M's credit relationship with the Lender was unfair isn't in the jurisdiction of the Financial Ombudsman Service, two of the grounds of complaint relating to the commission arrangements between the Lender and the Supplier also constitute separate and freestanding complaints.

The first ground relates to the Lender's compliance with the regulatory guidance in place at the Time of Sale insofar as it was relevant to disclosing the commission arrangements between them, and the second relates to whether the Lender is liable for the dishonest assistance of a breach of fiduciary duty by the Supplier because it took a payment of commission from the Lender without telling Mrs M (i.e. secretly).

However, no commission was paid by the Lender to the Supplier for arranging the Credit Agreement for Mrs M. As such, I find no basis to uphold this aspect of Mrs M's complaint.

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 M to accept or reject my decision before 28 January 2026.

Claire Poyntz
Ombudsman