

The complaint

Mr B's complaint is that Mitsubishi HC Capital UK PLC trading as Novuna Personal Finance ('Mitsubishi') acted unfairly and unreasonably when deciding against paying his claim under Section 75 of the Consumer Credit Act 1974 (the 'CCA') and turning down his complaint that it was party to an unfair debtor-creditor relationship as defined by Section 140A of the CCA.

The complaint is only in Mr B's name as only he was named on the Credit Agreement. But, I will refer to both Mr and Mrs B throughout this decision as the timeshare in question was in both of their names.

What happened

Mr and Mrs B purchased membership of an asset-backed timeshare called the Fractional Property Owners Club from a timeshare provider (the 'Supplier') on 27 December 2011 (the 'Time of Sale').

Mr and Mrs B paid for their membership by taking finance from Mitsubishi in Mr B's name. He entered into a 15-year loan for £11,865 (the 'Credit Agreement').

The Credit Agreement, and Mr B's associated credit relationship with Mitsubishi, ended on 26 April 2013.

Mr and Mrs B wrote to Mitsubishi via a representative ('SW') on 5 September 2019 to complain. They said they were making a Section 75 claim and also said they felt there was an unfair credit relationship. They said the following misrepresentations were made at the Time of Sale which are false:

- The fractional contract would last for 19 years, unlike the points contract.
- The property will be sold on the sale date and there will be a financial return on the investment.
- Fractional ownership is not timeshare.
- Fractional is ownership in property, specifically 25% of the property.
- Fractional ownership is an asset and an investment.
- Members converting to fractional ownership will own a share of the residual value.
- The legal title of this accommodation is held in trust for the benefit of the members.
- The net proceeds of sale of the property will be distributed to you in accordance with your fractional share.
- The fractional ownership has more than one purpose including holidays, trade-in and investment.
- The advice received during the sales meeting was general investment advice.

They said an unfair credit relationship exists because of the above misrepresentations and because:

- Mr and Mrs B were influenced by aggressive sales practices.

- The terms and conditions are not expressed in plain and intelligible language.
- Mr and Mrs B weren't given sufficient opportunity to become familiar with the documentation.
- Mr and Mrs B were misled about the liability to pay management fees and the future cost of these.
- No clear explanation of the implications associated with the management fees was given.
- The duration of the contract and the liability to pay annual management charges under it are unreasonable and contrary to the Unfair Terms in Consumer Contracts Regulations 1999 (the 'UTCCR').
- The product was sold as an investment in breach of various regulations.
- Mr and Mrs B entered into the loan agreement on the same day as the timeshare contract and this is prohibited.
- Any terms which exclude the Supplier's liability for misrepresentations is an unfair term.
- At no stage prior to entering into the loan agreement was any proper assessment done to assess Mr B's creditworthiness.
- No adequate explanation was given as to the features of the agreement which may have made the credit unsuitable for Mr B or have a significant adverse effect which he would be unlikely to foresee, especially given the length of the term, his age, and the high interest rate and total charge for the credit.

As they hadn't received any response from Mitsubishi, Mr B's representative then referred his complaint to the Financial Ombudsman Service on 13 December 2019.

The complaint was assessed by an Investigator who issued their findings on 25 October 2023. They said they felt Mitsubishi likely had a defence to the unfair relationship element of Mr B's complaint under the Limitation Act 1980 (the 'LA'). But they didn't address Mr B's complaint about his Section 75 claim.

SW explained that they didn't agree with these findings and asked for an Ombudsman's decision. They provided further comments, largely in relation to the product being sold as an investment.

The Investigator considered the matter afresh and issued a new outcome on 25 April 2024. In these findings, they concluded that while Mr B's Section 75 claim was within our Service's jurisdiction to consider, they felt Mitsubishi likely had a valid defence to such a claim under the LA. The Investigator also said that his complaint regarding an unfair credit relationship had been made too late under the time limits for bringing a complaint under the Financial Conduct Authority (FCA) DISP rules. So, our Service could not consider that aspect of the complaint.

SW disagreed and said they still wanted the matter to be reviewed by an Ombudsman. They provided further comments, but only in relation to the product being sold as an investment and why that meant, in their view, the complaint should be upheld.

As agreement on the outcome could not be reached, the complaint was referred to me to make a decision.

This decision only considers the merits of Mr B's complaint about the way Mitsubishi handled his claim under Section 75 of the CCA. I have dealt with whether our Service has jurisdiction to consider Mr B's complaint that the credit relationship between himself and Mitsubishi was unfair to him under Section 140A of the CCA, in a separate decision.

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.

In this part of Mr B's complaint, he is alleging that Mitsubishi was unfair and unreasonable in refusing to allow his claim under Section 75 of the CCA. His complaint is that Mitsubishi ought to have allowed it as there were misrepresentations made by the Supplier at the Time of Sale, and these misrepresentations induced him (and Mrs B) into making the purchase.

The Investigator in this case felt it would be reasonable for Mitsubishi to reject this claim as they would have a defence to it under the LA.

Creditors can reasonably reject Section 75 claims that they're first informed about after the claim has become time-barred under the LA. The reason being, that 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.

Having considered everything, I think Mr B's claim for misrepresentation was likely to have been made too late under the relevant provisions of the LA, which means it would have been fair for Mitsubishi to have turned down a Section 75 claim for this reason.

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 was the Time of Sale. I say this because Mr and Mrs B entered into the membership at that time based on the alleged misrepresentations by the Supplier, which Mr B says they relied on. And, as the loan from Mitsubishi was used to finance this membership, it was when Mr B entered into the Credit Agreement that he suffered a loss.

Mr B first notified Mitsubishi of his Section 75 claim on 5 September 2019. Since this was more than six years after the Time of Sale, I don't think it would be unfair or unreasonable of Mitsubishi to reject Mr B's concerns about the Supplier's alleged misrepresentations at the Time of Sale.

My final decision

For the reasons set out above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 1 August 2024.

Fiona Mallinson
Ombudsman