

The complaint

Mr B's complaint is, in essence, that Mitsubishi HC Capital UK Plc trading as Novuna Personal Finance (the 'Lender') acted unfairly and unreasonably by deciding against paying claims under Section 75 of the Consumer Credit Act 1974 (the 'CCA').

What happened

Mr B purchased membership of a timeshare from a timeshare provider (the 'Supplier') on 30 August 2016 (the 'Time of Sale'). He entered into an agreement with the Supplier to buy 7,500 points at a cost of £7,800 (the 'Purchase Agreement').

Mr B paid for his membership by taking finance of £7,800 from the Lender in his name only (the 'Credit Agreement').

Mr B – using a professional representative (the 'PR') – wrote to the Lender on 1 August 2018 (the 'Letter of Complaint') to complain. The following concerns were raised:

1. He was told that the membership was an exclusive, members only club. But, the holidays are in fact freely available to anyone via other websites and there is very little availability left for members of the club, meaning it's not as exclusive as promised.
2. He is finding it very difficult to book any holidays with the Supplier and has been told by their staff to call after midnight to get a booking. He was also told to try booking at least thirteen months in advance.
3. The Supplier has been sold to another company based in America. The sales staff have been paid off so there is now nobody to sell points, so no profit either.

The Lender dealt with Mr B's concerns as a complaint and issued its final response letter on 5 October 2018, rejecting it on every ground.

Mr B then referred the complaint to the Financial Ombudsman Service. It was assessed by an Investigator who, having considered the information on file, rejected the complaint on its merits in 2021. A second Investigator considered the complaint again in 2023 and also rejected the complaint on its merits.

Mr B disagreed with the Investigator's assessment and asked for an Ombudsman's decision – which is why it was passed to me. No further comments or evidence were provided by either party at that stage.

The legal and regulatory context

In considering what is fair and reasonable in all the circumstances of the complaint, I am required under DISP 3.6.4 R to take into account: relevant (i) law and regulations; (ii) regulators' rules, guidance and standards; and (iii) codes of practice; and (when appropriate), what I consider to have been good industry practice at the relevant time.

I am satisfied that of particular relevance to this complaint is:

- The CCA (including Section 75).
- The law on misrepresentation.

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 uphold this complaint.

But before I explain why, 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.

What is more, I have made my decision on the balance of probabilities – which means I have based it on what I think is more likely than not to have happened given the available evidence and the wider circumstances.

The complaint submitted by the PR didn't explain what kind of complaint was being made or under what legal provision they felt Mr B should be compensated. The Lender responded to the complaint as a Section 75 claim, and the Investigator also considered the complaint in that context, which I think is reasonable. The PR didn't object to or disagree with this.

So, I can confirm I've followed the same approach while also taking into account all other relevant law and regulations, as outlined above.

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.

In short, a claim against the Lender under Section 75 essentially mirrors the claim Mr B could make against 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 does not dispute that the relevant conditions are met in this complaint. And as I'm satisfied that Section 75 applies, if I find that the Supplier is liable for having misrepresented something to Mr B at the Time of Sale, the Lender is also liable.

The only part of Mr B's complaint which could reasonably be said to be a misrepresentation is his allegation that he was told that the membership was an exclusive, members only club. But, the holidays are in fact freely available to anyone via other websites and there is very little availability left for members of the club, meaning it's not as exclusive as promised.

But, I'm not persuaded that there was an actionable misrepresentation by the Supplier at the Time of Sale for the reason Mr B alleges.

The reason I say this is that beyond making the bare allegation, Mr B has provided no evidence to support it, such as what he was promised regarding exclusivity, by whom and in

what context. I also can't see that any such promises or guarantees were made in the paperwork he was provided with at the Time of Sale. Further, I'm aware that he was a member with the Supplier for several years before the Time of Sale, and there's no explanation why he only came to realise that non-members could book after then.

What's more, as there's nothing else on file that persuades there were any false statements of existing fact made to Mr B by the Supplier at the Time of Sale, I do not think there was an actionable misrepresentation by the Supplier for the reasons he alleges.

For these reasons, therefore, I do not think the Lender is liable to pay Mr B any compensation for the alleged misrepresentations of the Supplier. And with that being the case, I do not think the Lender acted unfairly or unreasonably when it dealt with the Section 75 claim in question.

Section 75 of the CCA: the Supplier's breach of contract

I've already summarised how Section 75 of the CCA works and why it gives Mr B a right of recourse against the Lender. So, it isn't necessary to repeat that here other than to say that, if I find that the Supplier is liable for having breached the Purchase Agreement, the Lender is also liable.

Mr B says that he could not holiday where and when he wanted to – which, on my reading of the complaint, suggests that he considers that the Supplier was not living up to its end of the bargain, and had breached the Purchase Agreement. Like any holiday accommodation, availability was not unlimited – given the higher demand at peak times, like school holidays, for instance. I can see that the sales paperwork explained that the availability of holidays was/is subject to demand. It also looks like he made use of his points to holiday on ten occasions between February 2017 and January 2019. I accept that he may not have been able to take certain holidays. But I have not seen enough to persuade me that the Supplier had breached the terms of the Purchase Agreement.

Mr B also suggests that the Supplier breached the Purchase Agreement because they were taken over by another company. I can see that the company referred to is a private equity fund which has acquired shares in the Supplier's parent company. However, neither Mr B nor the PR have said, suggested or provided evidence to demonstrate that he is no longer:

1. a member of the timeshare club and;
2. able to use his membership to holiday in the same way he could initially.

Overall, therefore, from the evidence I have seen, I do not think the Lender is liable to pay Mr B any compensation for a breach of contract by the Supplier. And with that being the case, I do not think the Lender acted unfairly or unreasonably when it dealt with the Section 75 claim in question.

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 Mr B's Section 75 claims. 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

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 12 September 2024.

Fiona Mallinson
Ombudsman