

The Complaint

Mrs T says that Mitsubishi HC Capital UK Plc (trading as Novuna) ('Novuna') didn't fairly or reasonably deal with claims she made under the Consumer Credit Act 1974 (the 'CCA') in relation to the purchase of a timeshare on 24 February 2013 (the 'Time of Sale') using finance from Novuna. She also says that Novuna's decision to lend to her was irresponsible.

Background to the Complaint

Mrs T purchased membership of a timeshare from a timeshare provider (the 'Supplier') at the Time of Sale and used a loan from Novuna to pay for it (the 'Credit Agreement'). A statement of account shows that she repaid the loan on 1 November 2013.

Unhappy with the purchase, Mrs T – using a professional representative ('PR') – wrote to Novuna on 15 June 2021 (the 'Letter of Claim') to make claims for misrepresentation and an unfair relationship under Sections 75 and 140A of the CCA. Mrs T also complained about Novuna's decision to lend to her at the Time of Sale.

It doesn't look like Novuna responded to the Letter of Claim. So, a complaint was referred to the Financial Ombudsman Service. Having notified Novuna of the complaint, it issued its final response arguing that Mrs T's CCA claims were made out of time under the Limitation Act 1980 (the 'LA') and rejecting her lending complaint on its merits.

The complaint was then looked at by an investigator who, having considered the information before her, thought that Mrs T's CCA claims were likely to have been made too late under the LA – giving Novuna a complete defence to those claims. And she didn't think that Mrs T's lending complaint should succeed either.

Mrs T disagreed with the investigator's assessment and asked for an ombudsman's decision – which is why it was passed to me.

My Findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Section 75: Misrepresentation

A claim for misrepresentation against the Supplier would ordinarily be made under Section 2(1) of the Misrepresentation Act 1967 (the 'MA'). 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).

A claim under Section 75 of the CCA is a "like" claim against the creditor. It essentially mirrors the claim the consumer could make against the supplier provided it satisfies certain conditions, which includes being made inside the relevant limitation period i.e., six years.

But a claim 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.

As Mrs T made a like claim against Novuna for misrepresentation under Section 75, she had six years from the date on which the cause of action accrued to make the claim. The date on which the ‘cause of action’ accrued was the Time of Sale. I say this because Mrs T entered into the purchase agreement based on the alleged misrepresentations of the Supplier – which she relied on. And as the loan from Novuna was used to help finance the purchase, it was when she entered into the Credit Agreement that she suffered a loss.

It follows, therefore, that she had six years from the Time of Sale to make a claim for misrepresentation. But as she didn’t put his claim to Novuna until 15 June 2021, her claim was likely to have been too late under the LA even if it had been submitted to court rather than to Novuna directly.

Section 140A: Unfair Relationship

Only a court has the power to decide whether the relationship between Mrs T and Novuna was unfair for the purpose of Section 140A. But, as it’s relevant law, I do have to consider it if it applies to the credit agreement in question – which it does.

However, the LA also applies to claims under Section 140A. And it was held in *Patel v Patel* [2009] that the time for limitation purposes ran from the date the credit agreement ended if it wasn’t in place at the time the claim was made. And as a claim under Section 140A is also “an action to recover any sum by virtue of any enactment” under Section 9 of the LA, the limitation period is six years.

As this claim, like Mrs T’s Section 75 claim, was only put to Novuna on 15 June 2021, I think Novuna was and is entitled to rely on the LA as a defence to it too, as Mrs T doesn’t dispute that the Credit Agreement she entered into at the Time of Sale ended on 1 November 2013 as per her statement of account.

The Lending Complaint

The Letter of Claim suggests that Novuna lent irresponsibly to Mrs T. It isn’t entirely clear whether that allegation was framed as part of her Section 140A claim. But as I’ve already explained why I think a claim under that provision was and is likely to have fallen outside of the time limit set by the LA, that doesn’t really matter.

Lending money under a regulated credit agreement of the kind in question was an activity covered directly by the Financial Ombudsman Service’s jurisdiction at the Time of Sale. But, in my view, not enough has been said and/or provided to support this allegation. And even if I were to find that Novuna failed to do everything it should have when it agreed to lend (and I make no such finding), I’d have to be satisfied that the lending was unaffordable for Mrs T before also concluding that she lost out as a result. And as I haven’t seen anything to persuade me that was the case, I don’t think this is a reason to uphold this complaint given its circumstances.

Conclusion

Only a court can decide whether Mrs T’s CCA claims were made out of time under the LA. But as it’s relevant law, I have to take it into account when deciding a fair and reasonable outcome to this complaint. As it looks like they were too late under the LA, I think Novuna is likely to have had (and still has) a complete defence to them. And given what I’ve said about

Novuna's decision to lend, I don't think there's anything it has to do to put things right on this occasion with all of that being the case.

My Final Decision

For the reasons set out above, I don't think this complaint should be upheld.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs T to accept or reject my decision before 12 October 2023.

Morgan Rees
Ombudsman