

The complaint

Mr C complains that Mitsubishi HC Capital UK Plc trading as Novuna Personal Finance¹ ('Novuna') is liable to pay him compensation under the Consumer Credit Act 1974 (as amended) (the 'CCA') following a complaint made about a timeshare bought using credit it provided.

The timeshare in question was bought in the joint names of Mr and Mrs C, but as the loan used to pay for it was in Mr C's sole name, he is the only eligible complainant here. I will, however, refer to both Mr and Mrs C where it is appropriate to do so.

What happened

Mr and Mrs C purchased membership of a timeshare (the 'Fractional Club') from a timeshare provider (the 'Supplier') on 17 December 2013 (the 'Time of Sale'). They entered into an agreement with the Supplier to buy 3,070 fractional points at a final cost of £9,980 (the 'Purchase Agreement').

Mr C paid for their Fractional Club membership by taking finance from Novuna for £9,980 in his sole name (the 'Credit Agreement'). The outstanding balance of this loan was cleared by Mr C on 27 March 2014.

On 11 January 2022, using a professional representative (the 'PR'), Mr C wrote to Novuna (the 'Letter of Complaint') to complain about:

1. Misrepresentations by the Supplier at the Time of Sale giving him a claim against Novuna under Section 75 of the CCA.
2. A breach of contract by the Supplier giving him a claim against Novuna under Section 75 of the CCA.
3. Novuna being party to an unfair credit relationship under the Credit Agreement and related Purchase Agreement for the purposes of Section 140A of the CCA.
4. Novuna paying undisclosed commission to the Supplier as a result of it arranging the Credit Agreement.

As these complaints 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.

Novuna dealt with Mr C's concerns as a complaint, and issued its final response letter on 21 February 2022, rejecting it on all grounds.

Mr C, via the PR, referred his complaint to the Financial Ombudsman Service. It was assessed by an Investigator who thought there were parts of the complaint that this Service didn't have jurisdiction to consider, and the remaining parts ought not to be upheld.

¹ At the time of the purchase Novuna was trading as 'Hitachi Capital Consumer Finance'.

Mr C did not accept this and asked for an Ombudsman's decision, which is why it came to me.

The provisional decision

Having considered everything, I decided that Mr C's complaint that Novuna had been party to an unfair credit relationship with him under Section 140A of the CCA had been made too late under the regulator's rules, so was not in the jurisdiction of this Service. But as regards the merits of the remaining complaint points, I set out my initial thoughts in a provisional decision (the 'PD'). I said:

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

[...]

Mr C's claims under Section 75 of the CCA – merits

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. It is unclear whether these relevant conditions have been met here, but for the reasons I come on to next, it is unnecessary for me to make a formal finding on this issue.

This is because the Limitation Act 1980 (the 'LA') imposes time limits for people to start legal proceedings – and there are different time limits for different types of claims. Essentially, this means that if someone waits too long to make a claim, the court will usually say it's 'time-barred'. For this reason, if a consumer makes a claim after the relevant time-limit has expired, we will usually say it was fair for the creditor to rely on the LA to decline the claim.

A claim under Section 75 is a "like" claim against the creditor. It essentially mirrors the claim a consumer could make against the Supplier.

Misrepresentation

The limitation period to make a claim against Novuna for alleged misrepresentation by the Supplier expires six years from the date on which Mr C had everything he needed to make such a claim.

As the letter of complaint to Novuna makes clear, Mr and Mrs C made their purchase of the Fractional Club membership on 17 December 2013. And Mr C says they made this purchase based on the alleged misrepresentations of the Supplier, which he says they relied on. And as a loan from Novuna was used to help finance the purchase, it was when Mr C entered into the Credit Agreement that he suffered a loss – which means it was at that time that he had everything he needed to make a claim.

So, Mr C needed to notify Novuna of his claim by 17 December 2019. But Mr C first notified Novuna of his claim for alleged misrepresentations by the Supplier on 11 January 2022. As that was more than six years after he entered into the Credit Agreement and related Purchase Agreement, I don't think it would have been unfair or unreasonable of Novuna to

rely on the LA to decline the claim. As such I do not think Novuna needs to do anything further in relation to his claim for misrepresentation.

Breach of contract

I have already summarised how Section 75 of the CCA works and why it gives consumers a right of recourse against a lender. So, it is not necessary to repeat that here other than to say that, if I find that the Supplier is liable for having breached the Purchase Agreement, Novuna is also liable.

Mr C says that they could not holiday where and when they wanted to – which, on my reading of the complaint, suggests that the Supplier was not living up to its end of the bargain, potentially breaching the Purchase Agreement. And because they haven't said exactly when this happened, I am unable to say whether Novuna would likely have had a defence under the LA in a similar way to his claim for misrepresentation. However, I don't think that matters in these circumstances, as I don't think Novuna was unfair when it did not accept the claim.

Like any holiday accommodation, availability was not unlimited – given the higher demand at peak times, like school holidays for instance. Some of the sales paperwork signed by Mr and Mrs C states that the availability of holidays was/is subject to demand, and I can see that they have made use of their membership to take holidays on a number of occasions. So, whilst I accept that they may not have been able to take certain holidays, I have not seen enough to persuade me that the Supplier has breached the terms of the Purchase Agreement.

So, from the evidence I have seen, I do not think Novuna is liable to pay Mr C any compensation for a breach of contract by the Supplier. And with that being the case, I do not think Novuna acted unfairly or unreasonably in relation to this aspect of the complaint either.

Section 75 - conclusion

In conclusion, as things currently stand, I do not think that Novuna acted unfairly or unreasonably when it dealt with the relevant Section 75 claims, so it does not need to do anything further in this regard.

Mr C's Commission Complaint

While I've found that the complaint that Mr C's credit relationship with Novuna was unfair isn't in the jurisdiction of the Financial Ombudsman Service, two of the grounds of complaint relating to the commission arrangements between Novuna and the Supplier also constitute separate and freestanding complaints. So, for completeness, I've considered those grounds on that basis here.

The first ground relates to Novuna's compliance with the regulatory guidance in place at the Time of Sale² insofar as it was relevant to disclosing the commission arrangements between them, and the second relates to whether Novuna is liable for the dishonest assistance of a breach of fiduciary duty by the Supplier because it took a payment of commission from Novuna without telling Mr C (i.e., secretly).

As both sides already know, the Supreme Court handed down an important judgment on 1 August 2025 in a series of cases concerned with the issue of commission: Johnson v

² The Office of Fair Trading guidance

FirstRand Bank Ltd, Wrench v FirstRand Bank Ltd and Hopcraft v Close Brothers Ltd [2025] UKSC 33 ('Hopcraft, Johnson and Wrench').

I acknowledge that it's possible that Novuna and the Supplier failed to follow the regulatory guidance in place at the Time of Sale insofar as it was relevant to disclosing the commission arrangements between them.

But regulatory breaches do not automatically mean a remedy is due. Such breaches and their consequences (if there are any) must be considered in the round, rather than in a narrow or technical way. And with that being the case, it isn't necessary to make a formal finding on that because, even if Novuna and the Supplier failed to follow the relevant regulatory guidance at the Time of Sale, it is for the reasons set out below that I don't currently think any such failure is itself a reason to require Novuna to pay compensation to Mr C.

In stark contrast to the facts of Mr Johnson's case, the amount of commission paid by Novuna to the Supplier for arranging the Credit Agreement that Mr C entered into wasn't high. At £973.05, it was only 9.75% of the amount borrowed and even less than that (5.34%) as a proportion of the charge for credit. So, had he known at the Time of Sale that the Supplier was going to be paid a flat rate of commission at that level, I'm not currently persuaded that Mr C either wouldn't have understood that or would have otherwise questioned the size of the payment at that time. After all, Mr C wanted Fractional Club membership and had no obvious means of his own to pay for it. And at such a low level, the impact of commission on the cost of the credit he needed for a timeshare he wanted doesn't strike me as disproportionate. So, I think Mr C would still have taken out the loan to fund the purchase at the Time of Sale had the amount of commission been disclosed.

What's more, based on what I've seen so far, the Supplier's role as a credit broker wasn't a separate service and distinct from its role as the seller of timeshares. It was simply a means to an end in the Supplier's overall pursuit of a successful timeshare sale. I can't see that the Supplier gave an undertaking – either expressly or impliedly – to put to one side its commercial interests in pursuit of that goal when arranging the Credit Agreement. And as it wasn't acting as an agent of Mr C but as the supplier of contractual rights he obtained under the Purchase Agreement, the transaction doesn't strike me as one with features that suggest the Supplier had an obligation of 'loyalty' to him when arranging the Credit Agreement and thus a fiduciary duty.

So, for the reasons I set out above, I'm not persuaded that the Supplier – when acting as credit broker – owed Mr C a fiduciary duty. So, the remedies that might be available at law in relation to the payment of secret commission aren't, in my view, available to him. And while it's possible that Novuna failed to follow the regulatory guidance in place at the Time of Sale insofar as it was relevant to disclosing the commission arrangements between it and the Supplier, I don't think any such failure on Novuna's part is itself a reason to uphold this complaint because, for the reasons I also set out above, I think Mr C would still have taken out the loan to fund his purchase at the Time of Sale had there been more adequate disclosure of the commission arrangements that applied at that time."

So, in conclusion, I did not think Mr C's complaint - that Novuna was unfair in not accepting his claims under Section 75 of the CCA - should be upheld, and I could see no other reason why it would be fair or reasonable to direct Novuna to compensate Mr C.

The responses to the provisional decision

The PR, on Mr C's behalf, said it had nothing to add in response to the PD. The Lender did not respond. As the deadline for further submissions has passed, the complaint has returned to me for further consideration.

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.

Having reconsidered everything, and as no new evidence has been submitted or arguments made in response to my provisional findings, I see no reason to depart from the outcome I reached in the PD, an extract of which is set out above.

My final decision

For all of the reasons set out above, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 18 February 2026.

Chris Riggs
Ombudsman