DRN-4747714

Financial Ombudsman Service

The complaint

Mr A's complaint is, in essence, that Mitsubishi HC Capital UK Plc, trading as Novuna Personal Finance, (the 'Lender') acted unfairly and unreasonably by (1) being party to an unfair credit relationship with him 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.

These events relate to the purchase of a type of timeshare membership which took place in June 2013.

What happened

I will be issuing two decisions about this complaint

I should first explain that I issued a provisional decision (PD) about all these matters on 26 March 2026. I had hoped that by doing so, the professional representative (PR) instructed by Mr A might clarify what appear to be several material uncertainties about his overall dealings with the timeshare Supplier in question (the 'Supplier').

I am now issuing a final decision. But to be clear, I will be issuing two decisions about this June 2013 timeshare sale. In this *first* decision I will deal solely with Mr A's complaint under section 75[1] of the CCA (and the commission element). I will then consider the rest of Mr A's complaint[2] in a *second* decision and in which I'll be saying the alleged elements of the credit relationship being unfair are outside of my jurisdiction.

The reason for issuing *two* decisions is that different considerations apply given the rules and time-limits we work to.

Introductory information

The circumstances are that Mr A has instructed a PR to submit a single, discrete complaint on his behalf. That complaint concerns a timeshare membership sale that took place in June 2013. However, the evidence suggests that Mr A in fact purchased several different timeshare membership products from the same provider over a number of years. For example, I can see documentation indicating that he may have entered into timeshare memberships in 2012, 2013, and again in 2015.

There is therefore a chronology and a degree of complexity to Mr A's dealings with the Supplier going back many years and which is not reflected in the complaint currently before this Service. The complaint as presented now, focuses solely on the 2013 purchase. And given that Mr A has engaged a PR to bring his complaint forward, it is noteworthy that even after my PD, which presented the opportunity for further clarification, what has been submitted is a single and apparently straightforward complaint about one specific sale, said to have taken place on or around 25 June 2013.

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[1] Section 75 is about alleged misrepresentations made at the point of sale.

[2] About Section 140A of the CCA – an alleged unfair credit relationship.

Given these considerations, and adopting a pragmatic approach, I have decided to limit this decision to the June 2013 transaction as it has been set out by Mr A's PR in the Letter of Complaint dated 31 January 2023. This concerns the purchase of a 'Fractional Club' membership from the Supplier. This membership was asset-backed, meaning that it entitled Mr A to a share of the net sale proceeds of a named property (the 'Allocated Property') at the end of the membership term. Mr A also financed the purchase by borrowing funds from the Lender. Evidence from a separate complaint suggests that all Mr A's outstanding borrowing with this Lender was repaid in full in May 2016.

In January 2023, Mr A used his (current) PR to complain about the purchase and the related loan. The complaint letter said, in summary:

- That he had purchased an investment that would appreciate in value when that was not true.
- That he would own a share in a property that would increase in value during the membership term when that was not true.
- He could sell the timeshare back to the resort or easily sell it at a profit when that wasn't true.
- He was made to believe that he would have access to a specific apartment all around the year.

As I have implied, Mr A complained that this led to misrepresentations under Section 75 of the CCA (and also an unfair relationship for the purposes of section 140A which I will deal with in the '*second*' decision).

The Lender said that the complaint about Section 75 was time barred under the Limitation Act 1980 (LA) because the purchase was in June 2013 and he hadn't made his complaint until 2023.

Dissatisfied with the Lender's response, Mr A's PR referred the complaint to the Financial Ombudsman Service. One of our investigators looked into the complaint and said they didn't think it was unfair for the Lender to rely on the LA to decline a claim under Section 75 of the CCA. In response, the PR asked for the complaint to be passed to an ombudsman for a decision. It argued that Section 32 of the LA, which deals with fraud and deliberate concealment, should mean Mr A had more time to raise his complaint.

My PD of 26 March 2026 comprehensively set out why I wasn't intending to uphold the Section 75 complaint. It also explained that whilst some commission had changed hands between the Lender and the Supplier, this didn't make the overall credit relationship unfair. I gave the parties two more weeks to submit any more information or evidence they wanted to.

The PR replied on Mr A's behalf saying it didn't accept or agree with my PD. However, its comments were almost entirely restricted to the issue of commission.

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.

I am not upholding Mr A's complaint. I'm very sorry to disappoint him.

The Section 75 Complaint

Section 75(1) of the CCA protects consumers who buy goods and services on credit.

A claim under Section 75 is a "like" claim against the creditor. It essentially mirrors the claim the consumer could make against the Supplier. It says, that in certain circumstances, the finance provider is legally answerable for any misrepresentation(s) or breach of contract by the supplier. Liability under Section 75 isn't based on anything the Lender does wrong, but the misrepresentations and breaches of contract by the Supplier. If the Lender is notified of a valid Section 75 claim, it should pay its liability. If it fails or refuses to do so, that failure or refusal can give rise to a complaint to the Financial Ombudsman Service.

When a complaint is referred to the ombudsman on the back of an unsuccessful attempt to advance a Section 75 claim, the act or omission that engages the Service's jurisdiction is different to the considerations under Section 140A. It is the time of the creditor's refusal to accept and pay the debtor's claim which is relevant, rather than anything that occurs before the claim was put to the creditor. As a result, the 'standard' jurisdiction rules which the Financial Ombudsman Service typically works to—the 6 and 3 year time limits (under DISP 2.8.2 (2) R)—don't usually start until the respondent firm answers and refuses the Section 75 claim.

However, there is another consideration which means I wouldn't normally think it was unfair for a respondent firm to rely on the LA to decline a claim – and I don't think it's unfair in this case.

As a general rule a creditor can reasonably reject Section 75 claims that they are first informed about once that claim has become time-barred under the LA. This is because 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.

A claim for misrepresentation against the Supplier would ordinarily be made under Section 2(1) of the Misrepresentation Act 1967. The limitation period to make such a claim expires ***six years*** from the date on which the cause of action accrued[3]. But a claim, like the one in question here 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.

With all this in mind, it is relevant here for me to consider whether Mr A's Section 75 claim was time-barred under the LA before it was put to the Lender. The date on which the cause of action accrued was the Time of Sale; in this case, we know the sale took place on 25 June 2013. A complaint was made to the Lender, but not until 31January 2023. The Lender then raised an 'out of time' argument in it's final response letter of 17 February 2023. So, in summary, because much more than six years had passed between the Time of Sale (2013) and when the first claim was put to the Lender (2023), I don't think it was unfair or unreasonable to reject the concerns about the Supplier's alleged misrepresentations.

The PR says Section 32 of the LA should allow Mr A more time to make the claim. Section 32 has the potential to postpone the relevant limitation period in specific cases of 'fraud, concealment, or mistake'. I have thought about these things here. But in this case, I don't agree with the PR that any alleged acts of fraud, concealment, or mistake prevented Mr A from bringing a complaint. The PR references the Supplier's sales documentation used at the time and also its internal training materials, which it implies concealed the truth from Mr A. Having considered the PR's submissions with care, I'm not persuaded Mr A should have

[3] Section 2 of the Limitation Act 1980

had more time to make a claim. It seems to me that the original points of complaint specifically refer to allegations of emerging problems which would have become obvious to him very soon after making the 2013 purchase.

For Section 32 of the LA to assist Mr A, he would need to show that he couldn't have discovered the alleged 'frauds, concealments or mistakes'. But I think the circumstances as he alleges would have caused discovery of these alleged matters within a few weeks or months of the membership being taken out. So, I do not agree, taking account of the submissions provided by the PR that Section 32 extends the legal time limit for Mr A. In short, I'm not persuaded that this issue makes any difference here.

Therefore, to be clear, I do not think it was unfair for the Lender to decline the claim under section 75 of the CCA. It was made too late.

Commission

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

The Supreme Court ruled that, in each of the three cases, the commission payments made to car dealers by lenders were legal, as claims for the tort of bribery, or the dishonest assistance of a breach of fiduciary duty, had to be predicated on the car dealer owing a fiduciary duty to the consumer, which the car dealers did not owe. A "disinterested duty", as described in *Wood v Commercial First Business Ltd & ors and Business Mortgage Finance 4 plc v Pengelly* [2021] EWCA Civ 471, is not enough.

However, the Supreme Court held that the credit relationship between the Lender and Mr Johnson was unfair under Section 140A of the CCA because of the commission paid by the Lender to the car dealer. The main reasons for coming to that conclusion included, amongst other things, the following factors:

1. The size of the commission (as a percentage of the total charge for credit). In Mr Johnson's case it was 55%. This was *"so high"* and *"a powerful indication that the relationship…was unfair"* (see paragraph 327);
2. The failure to disclose the commission; and
3. The concealment of the commercial tie between the car dealer and the Lender.

The Supreme Court also confirmed that the following factors, in what was a non-exhaustive list, will normally be relevant when assessing whether a credit relationship was/is unfair under Section 140A of the CCA:

1. The size of the commission as a proportion of the charge for credit;
2. The way in which commission is calculated (a discretionary commission arrangement, for example, may lead to higher interest rates);
3. The characteristics of the consumer;
4. The extent of any disclosure and the manner of that disclosure (which, insofar as Section 56 of the CCA is engaged, includes any disclosure by a supplier when acting as a broker); and
5. Compliance with the regulatory rules.

From my reading of the Supreme Court's judgment in *Hopcraft, Johnson and Wrench*, it sets out principles which apply to credit brokers other than car dealer–credit brokers. So, when considering allegations of undisclosed payments of commission like the one in this complaint, *Hopcraft, Johnson and Wrench* is relevant law that I'm required to consider under Rule 3.6.4 of the Financial Conduct Authority's Dispute Resolution Rules ('DISP').

But I don't think *Hopcraft, Johnson and Wrench* assists Mr A in arguing that the credit relationship with the Lender was unfair for reasons relating to commission given the facts and circumstances of this complaint.

I haven't seen anything to suggest that the Lender and Supplier were tied to one another contractually or commercially in a way that wasn't properly disclosed to Mr A, nor have I seen anything that persuades me that the commission arrangement gave the Supplier a choice over the interest rate that led into a credit agreement that cost disproportionately more than it otherwise could have.

I acknowledge that it's possible that the Lender 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 case law makes it clear that regulatory breaches do not automatically create unfairness for the purposes of that provision. Such breaches and their consequences (if there are any) must be considered in the round, rather than in a narrow or technical way. With that being the case, it isn't necessary to make a formal finding on that because, even if the Lender 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 think any such failure is itself a reason to find the credit relationship in question unfair to Mr A.

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. As it wasn't acting as an agent but as the supplier of contractual rights obtained under the Purchase Agreement, the transaction doesn't strike me as one with features that suggest the Supplier had an obligation of 'loyalty' when arranging the Credit Agreement and thus a fiduciary duty.

In stark contrast to the facts of Mr Johnson's case, the amount of commission paid by the Lender to the Supplier for arranging this June 2013 Credit Agreement was £632.68 and so was 9.75% of the amount borrowed, and less than that, 5.34% as a proportion of the charge for credit – which is the calculation the Supreme Court used.

So, had Mr A 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 persuaded that he either wouldn't have understood that, or would have otherwise questioned the size of the payment at that time. After all, I think he wanted Fractional Club membership and had no obvious means of his own to pay for it. At such a level, the impact of commission on the cost of the credit he required for a timeshare he wanted doesn't strike me as disproportionate. So, I think he would still have taken out the loan to fund the purchase at the time had the amount of commission been disclosed.

Commission: The Alternative Grounds of Complaint

While I've found that Mr A's credit relationship with the Lender wasn't unfair for reasons relating to the commission arrangements between it and the Supplier, two of the grounds on

which I came to that conclusion could also constitute separate and freestanding complaints to Mr A's complaint about an unfair credit relationship. So, for completeness, I've considered those grounds on that basis here.

The first ground 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 Mr A (i.e., secretly). And the second 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.

However, for the reasons I set out above, I'm not persuaded that the Supplier – when acting as credit broker – owed Mr A 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. While it's possible that the Lender 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 the Lender's part is itself a reason to uphold this complaint because, for the reasons I also set out above, I think he would still have taken out the loan to fund the purchase at the Time of Sale had there been more adequate disclosure of the commission arrangements that applied at that time.

Response to my PD

As I mentioned above, following the issue of my PD the PR hasn't fundamentally engaged with any of the issues other than the commission. However, I feel I have comprehensively explained above why I don't think the commission which changed hands between the Lender and the Supplier changes anything in this case. There's simply nothing more I can add to what I've said, other than confirm I feel I have applied the law correctly and appropriately; and made my decision on what I consider is fair and reasonable given all the circumstances.

As the PR seems to have erred in the percentage of commission involved in this case[4], I remind it that the amount of commission paid by the Lender to the Supplier for arranging this June 2013 Credit Agreement was £632.68 or 9.75% of the amount borrowed. It was 5.34% as a proportion of the charge for credit - the calculation the Supreme Court used. I remain of the view that Mr A would still have taken out the loan to fund the 2013 purchase had the amount of commission been disclosed.

Conclusion

I have explained above why I do not uphold Mr A's Section 75 complaint.

I also do not think the commission made the relationship unfair either. Once again, I'm sorry to disappoint him.

My final decision

I do not uphold Mr A's complaint.

I do not require Mitsubishi HC Capital UK Plc, trading as Novuna Personal Finance, to do anything more.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 13 May 2026.

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[4] In its reply to the PD, the PR said the commission paid represented 10.25% (which isn't correct).

Michael Campbell
Ombudsman