

The complaint

Mr F'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'), (2) deciding against paying a claim under section 75 of the CCA, and (3) lending to him irresponsibly by failing to carry out proper affordability checks.

Background to the complaint

Mr and Mrs F purchased membership of a timeshare (the 'Fractional Club') from a timeshare provider (the 'Supplier') on 19 July 2012 (the 'Time of Sale'). They entered into an agreement with the Supplier to buy 738 fractional points at a cost of £11,299 (the 'Purchase Agreement').

Fractional Club membership was asset backed – which meant it gave Mr and Mrs F more than just holiday rights. It also included a share in the net sale proceeds of a property named on the Purchase Agreement (the 'Allocated Property') after their membership term ends.

Mr F paid for their Fractional Club membership by taking finance of £11,299 from the Lender (the 'Credit Agreement') in his sole name. He is therefore the sole eligible complainant in this case. The loan was settled on 14 October 2013.

Mr F – using a professional representative (the 'PR') – wrote to the Lender on 10 March 2020 (the 'Letter of Complaint') to raise a number of different concerns. As those concerns 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.

The Lender dealt with Mr F's concerns as a complaint and issued its final response letter on 15 April 2021, rejecting it on every ground.

Meanwhile the complaint had been referred to the Financial Ombudsman Service. It was assessed by an Investigator who, having considered the information on file, decided that Mr F had complained too late for our service to consider most of the issues he'd raised, due to the time limits in the FCA's rules and in the Limitation Act 1980. The Investigator decided that only Mr F's complaint that the Lender had failed to carry out proper checks to ensure he could afford the loan had been brought in time, but he rejected that part of the complaint on its merits.

Mr F disagreed with the Investigator's assessment and asked for an ombudsman's decision – which is why it was passed to me.

The legal and regulatory context

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

The legal and regulatory context that I think is relevant to this complaint is no different to that shared in several hundred ombudsman decisions on very similar complaints. And with that being the case, it is not necessary to set it out here.

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 done so, I do not think I can uphold this complaint. I will explain why.

Our jurisdiction is set out in rules made by the Financial Conduct Authority ('FCA'). These rules include time limits on bringing a complaint to our Service. These say we can normally only consider a complaint if it was made within six years of the event complained of, or (if later) within three years from the date on which the complainant became aware "*or ought reasonably to have become aware*" that he had cause for complaint. We can still consider a late complaint if it was late as a result of exceptional circumstances.

Mr F complained to the Lender in March 2020, nearly eight years after the Time of Sale. If he believed that the Lender had not asked him about his income and expenditure or had not taken steps to ensure that he could afford the loans, then he was aware of that at the time, so the three-year rule does not assist him. I have not been told about any exceptional circumstances which caused the delay in complaining. So I think that his complaint about irresponsible lending has been brought too late under the FCA's rules, and that I therefore cannot consider it.

For the purposes of a claim under section 140A of the CCA, the time under the six-year time limit begins to run when the credit relationship between the debtor and the creditor ends. In this instance, that was when the loan was settled in October 2013, so Mr F needed to complain by October 2019. Again, he knew he had grounds to complain about unfairness at the Time of Sale, because one of his complaints was about high-pressure sale tactics. So I'm satisfied that I cannot consider the complaint about an unfair credit relationship existing between Mr F and the Lender.

The position is different when it comes to a claim under section 75. For the purposes of my jurisdiction, time runs not from when the Credit Agreement was entered into or from the alleged misrepresentations, but from when the Lender rejected Mr F's claim under that section, which it did in 2021. So I certainly have jurisdiction to consider his complaint about that.

However, for a claim under section 75 about misrepresentation, time under the Limitation Act 1980 runs from the Time of Sale, which means that the limitation period expired in July 2018. So I agree with the Investigator that the section 75 claim brought in 2020 was brought out of time, and that this gave the Lender a complete defence to that claim. I therefore cannot say that the Lender should have upheld Mr F's claim.

My final decision

My decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 28 November 2025. But this decision brings this complaint to an end.

Richard Wood
Ombudsman