

The complaint

Mr M'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.

The timeshare in question was bought in the joint names of Mr and Mrs M, but as the associated credit agreement was in Mr M's sole name, he is the only eligible complainant here. I shall, however, refer to both Mr and Mrs M where appropriate.

What happened

Mr and Mrs M purchased membership of a timeshare (the 'Fractional Club') from a timeshare provider (the 'Supplier') on 3 January 2013 (the 'Time of Sale'). They entered into an agreement with the Supplier to buy 2,988 fractional points at a cost of £45,599 (the 'Purchase Agreement'). But after trading in their existing timeshare, they ended up paying £13,086 for membership of the Fractional Club.

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

Mr and Mrs M paid for their Fractional Club membership by taking finance of £13,086 from the Lender in Mr M's sole name (the 'Credit Agreement').

Mr M made the required monthly repayments under the Credit Agreement of £205.46 until 18 February 2014 when he made a lump-sum payment to clear the account and settle the debt.

Mr M – using a professional representative (the 'PR') – wrote to both this Service and the Lender on 19 February 2020 (the 'Letter of Complaint') to complain about:

1. Misrepresentations by the Supplier at the Time of Sale giving him a claim against the Lender under Section 75 of the CCA, which the Lender failed to accept and pay.
2. The Lender being party to an unfair credit relationship under the Credit Agreement and related Purchase Agreement for the purposes of Section 140A of the CCA.

(1) Section 75 of the CCA: the Supplier's misrepresentations at the Time of Sale

Mr M says that the Supplier made a number of pre-contractual misrepresentations at the Time of Sale – namely that the Supplier:

- Told them that they were buying an interest in part of a property when that was not true.
- Told them that Fractional Club membership was an "investment" that would increase in value, when that was not true.
- Told them that Fractional Club could be sold at any time and that the Supplier would

purchase it, or that they could pass it on to their children, when this was not true.

- Told them that the Supplier's holiday resorts were exclusive to its members and purchasing it would give them improved availability when that was not true.
- Told them that the Lender was the only finance provider it used.

Mr M says that he has a claim against the Supplier in respect of one or more of the misrepresentations set out above, and therefore, under Section 75 of the CCA, he has a like claim against the Lender, who, with the Supplier, is jointly and severally liable to Mr M.

(2) Section 140A of the CCA: the Lender's participation in an unfair credit relationship

The Letter of Complaint set out several reasons why Mr M says that the credit relationship between him and the Lender was unfair to him under Section 140A of the CCA. In summary, they include the following:

- Fractional Club membership was marketed and sold to them as an investment in breach of regulation 14(3) of the Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010 (the 'Timeshare Regulations').
- The contractual terms setting out the obligation to pay annual management charges for the duration of their membership or the contract could be terminated by the Supplier, was an unfair contract term under the Unfair Terms in Consumer Contracts Regulations 1999 (the 'UTCCR').
- The Supplier failed to provide sufficient information and documentation in relation to the Fractional Club prior to the final agreement.
- The Supplier was unauthorised to broker the Credit Agreement.

The Lender dealt with Mr M's concerns as a complaint and issued its final response letter on 28 May 2020, rejecting it on every ground. As Mr M was unhappy with this response, he asked this Service to consider his complaint.

An Investigator considered everything that had been submitted and thought Mr M's complaint ought not to be upheld. He thought that the Lender would have had a defence to Mr M's Section 75 claim under the Limitation Act 1980 (the 'LA') as he had made the claim more than six years after the event complained about. So, he didn't think the Lender had been unfair or unreasonable in not accepting his claim. He also thought the LA applied to Mr M's complaint of unfairness under Section 140A of the CCA. He said that Mr M had six years from the end of the Credit Agreement to complain, which he said was on 18 February 2014 when the debt was cleared. And as he didn't complain to the Lender until 19 February 2020, which was more than six years later, he had made his complaint too late.

The PR did not agree. It said that Mr M's credit relationship with the Lender had not ended on 18 February 2014 as the Lender had made an interest adjustment on 28 February 2014 and had refunded to Mr M £6.69. So, it said the credit relationship was in place until 28 February 2014 and as such Mr M's complaint was made within six years.

Mr M's complaint was then considered by a second Investigator at this Service. And having done so, the Investigator thought that Mr M had made his complaint under Section 140A of the CCA too late, so it was not in the jurisdiction of this Service. He, like the first Investigator, thought that Mr M's credit relationship with the Lender had ended when he settled the account with a lump sum payment, and because Mr M had made his complaint more than six years after the end of his credit relationship with the Lender, and more than three years after he knew, or ought reasonably to have known he had cause to complain, he had made

the complaint too late under the rules by which this Service operates. And he had not seen any evidence of any exceptional circumstances which would explain why the complaint was made late and so should therefore be considered.

The Investigator then considered Mr M's Section 75 of the CCA claim of misrepresentation(s) by the Supplier. He thought this complaint had been made in time, so was in the jurisdiction of this Service, but thought the Lender would likely have had a defence to it under the LA so it had not been unfair or unreasonable in not accepting Mr M's claim.

The PR did not agree with this outcome. It repeated that it considered Mr M's credit relationship with the Lender to have continued until 28 February 2014 as the Lender had made an interest adjustment to the account and had sent Mr M an updated statement on that day. It also said that the wording of the Lender's final response letter said that Mr M had six months from the date of the letter to refer the complaint to this Service, or it would not consent to this Service considering it. This meant that the Lender *had consented* as the referral was made within that time.

As no agreement on either this Service's jurisdiction, nor the merits of the complaint could be reached, the matter has come to me.

I initially thought about whether this Service had jurisdiction to consider Mr M's complaint. And having done so I agreed with what the Investigator had said in this regard. I issued a jurisdiction decision in which I said Mr M's complaint of unfairness under Section 140A of the CCA was out of jurisdiction as it had been made too late. But I said this Service was able to consider the merits of Mr M's complaint about how the Lender had dealt with his Section 75 claim.

So, in this decision I shall deal with the merits of Mr M's complaint about the Lender's handling of his concerns about the Supplier's alleged misrepresentations.

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.

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'd 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. The limitation period to make such a claim against the Lender for alleged misrepresentations by the Supplier expires six years from the date on which Mr M had everything he needed to make such a claim.

As the Letter of Complaint to the Lender makes clear, Mr and Mrs M entered into the purchase of the timeshare on 3 January 2013 based on the alleged misrepresentations of the Supplier, which he says he relied on. And as the credit arrangement from the Lender was used to help finance the purchase, it was when Mr M 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.

Mr M first notified the Lender of his claim for alleged misrepresentations by the Supplier on

19 February 2020. As that was more than 6 years after he entered into the Credit Agreement and related timeshare agreement, I don't think it would have been unfair or unreasonable of the Lender to reject Mr M's concerns about the Supplier's alleged misrepresentations.

As a result, while the Lender may not have relied upon the LA to reject the claim, it would not have been unreasonable for it to have done so. As such, given the facts and circumstances of this complaint, I don't think there's anything more that the Lender needs to do to put things right here.

My final decision

I do not uphold Mr M's complaint about Mitsubishi HC Capital UK Plc trading as Novuna Personal Finance's handling of his claim under Section 75 of the CCA.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 27 March 2025.

Chris Riggs
Ombudsman