

## The complaint

Mr A's complaint is, in essence, that Mitsubishi HC Capital UK Plc trading as Novuna (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 his claim under Section 75 of the CCA.

## What happened

Mr A and Mrs A purchased a membership of a timeshare (the 'Fractional Club') from a timeshare provider (the 'Supplier') on 23 August 2016 (the 'Time of Sale'). They entered into an agreement with the Supplier to buy 1040 bi-annual fractional points at a cost of £11,990 (the 'Purchase Agreement').

Fractional Club membership was asset backed – which meant it gave Mr A and Mrs A 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 A paid for this Fractional Club membership by taking finance of £11,990 from the Lender in Mr A's sole name (the 'Credit Agreement').<sup>1</sup> The loan was repaid in full on 28 September 2017, when it was refinanced with another lender.

Mr A – using a professional representative (the 'PR') – wrote to the Lender (dated 18 April 2024) and said that Mr A had lost out and wished to make a claim under S140A CCA and under S75 of the CCA against the Lender.

On 03 May 2024, the Lender issued their final response letter on the matter rejecting Mr A's claims on every ground. So, Mr A brought his complaint to this service.

In July 2024 Mr A's complaint was assessed by an Investigator who, having considered the information on file, decided that Mr A's S140A claim wasn't in this service's jurisdiction. The Investigator also decided that in regard to Mr A's S75 claim the Lender had fairly rejected it by applying the Limitation Act 1980 (the 'LA').

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<sup>1</sup> Because the Credit Agreement was in Mr A's sole name, only he is eligible to bring this complaint, so I will refer to him throughout.

Mr A through his PR disagreed with the Investigator's assessment by making arguments about the merits of the matter (the PR did not make arguments about jurisdiction or the LA.) The PR on behalf of Mr A asked for an Ombudsman's decision – which is why it was passed to me.

I issued a provisional decision dated 20 March 2025 which, for broader reasons than those of our Investigator, found a preliminary position that Mr A's S140A claim wasn't in this service's jurisdiction. I also thought that in regard to Mr A's S75 claim the Lender had fairly rejected it by applying the LA.

The Lender accepted my provisional position without further comment. The PR disagreed and provided arguments on both the S140A claim (jurisdiction) and the S75 claim (limitation).

### **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.

This decision considers the Section 75 claim only, as the S140A claim has been dealt with separately.

I'm not persuaded by the PR's arguments further to my provisional decision. I shall address those arguments under the section entitled '*further arguments*'. I shall now recount my provisional thinking on the S75 claim and the LA.

#### *My provisional arguments*

Within the letter of claim the PR made a claim on Mr A's behalf under S75 of the CCA. It included allegations of misrepresentation during the sales process and submissions in support of those allegations. This membership was purchased on 23 August 2016 by Mr A and the Lender in its final response dated 03 May 2024 has said:

*"The Limitation Act 1980 sets out clear deadlines by which any claims may be brought for breach of contract and misrepresentation. Such claims must be brought within six years of the date the cause of action accrued. Limitation in respect of your clients claim against (the Supplier) therefore expired on 23/08/2022."*

Mr A through his PR has said that the timeshare supplier misrepresented the nature of the membership to him when he bought it. However, under section 9 of the Limitation Act 1980, Mr A in practice had to make that claim within six years of when he entered into the Purchase and Credit Agreements – which was in August 2016 – because that is when he says he lost out having relied on false statements of fact. As the claim wasn't made to the Lender until 03 May 2024 it is clearly outside that six-year time limit. And so, on the face of it, I think the Lender fairly dealt with Mr A's claim to it.

#### *Further arguments*

The PR has made arguments for extending the time limits set out in the LA which it hasn't made previously and hasn't made to the Lender. The LA provides for extensions of the time limits in certain circumstances. Having considered the facts of this complaint, I did not think the time limits I set out above could be extended under any of the provisions of the LA. I have considered several reasons specifically raised in more detail by the PR.

Mr A's PR said that limitation could be extended by s.14A of the LA. That provision is titled "*Special time limit for negligence actions where facts relevant to cause of action are not known at date of accrual*" and applied to an action for damages for negligence. It provides a second period in which those types of claims can be made. However, in the case of *Thomas v Taylor Wimpey Developments* [2019] EWHC 1134 (TCC) at para [41] the court said: "*...claims for damages for statutory misrepresentation are not claims for damages for negligence, because it is not necessary for the claimant making such a claim to aver any negligent act or omission on the part of the defendant, and therefore section 14A of the Limitation Act 1980 does not apply to them.*"

Having considered Mr A's arguments I think that none of Mr A's claims were for damages for negligence which could give rise to a claim to which s.14A LA could apply. So, I'm not persuaded by that argument that the Lender as acted unfairly by applying the LA here.

The PR also asked me consider s.32 LA, which states that in cases where an action is based on the fraud of the defendant or a fact relevant to the right of action has been deliberately concealed from the claimant by the defendant, the limitation period only starts to run from when a claimant discovers the fraud or concealment (or could have discovered it using reasonable diligence).

It had been argued that the timeshare supplier's conduct amounts to a fraud. Having read the submissions made on this point, I failed to see what the alleged fraud actually was – in other words, what it was about this membership that was hidden from Mr A and meant he had been victim of a fraud. So far as I can see, he took out a timeshare agreement and it worked in the way intended, i.e. he was able to use it to take such a holiday or holidays and received an interest in the Allocated Property as he was told he would.

The PR argues that the Supplier acted fraudulently in such matters as its handling the valuation of the Allocated Property. Despite the PR's arguments, I've not actually seen any supporting evidence of the Supplier acting fraudulently generally or in its handling of the underlying valuation of the Allocated Property. Nor has the PR provided any argument as to how the Lender has considered the matter unfairly, bearing in mind the dearth of supporting evidence generally and that it hasn't provided any such persuasive evidence of fraud to the Lender for it to consider specifically. And it should be remembered that Mr A has to, at least some degree, make out his claim to the Lender as he would have to do in a like claim against the Supplier. And as I've described Mr A did get what he bought.

For there to be a cause of action for a fraudulent misrepresentation, and therefore one which The Lender could be jointly liable for under s.75 CCA, there would need to be a number of things needed to be found. There would need to be a false representation by the fraudster, that representation would need to have been made knowing it was false (or being reckless as whether it was false), the fraudster would need to intend the claimant acts in reliance of the representation and as a result of that, they had suffered a loss. Here I could not see any evidence that any of those four elements were satisfied, in particular I did not think Mr A or his PR have set out what the false statement of fact was that it was alleged the Supplier had made to him.

Mr A has made a claim under s.75 here. If facts relevant to those causes of action were deliberately concealed from him, the limitation period may be extended. However, I do not consider that the concealment alleged by the PR concealed facts which could be viewed as essential elements of those rights of action advanced by Mr A. In any event, I did not consider there was sufficient evidence to support the assertion that those facts were indeed concealed; therefore, I'm satisfied that s.32 LA does not extend the limitation period in this case.

The PR has argued that by applying the LA here constitutes an (in essence) unfair and unreasonable conclusion to these matters. I note that the Lender issued its position (relying on the LA) to the PR on 03 May 2024 and the PR has only recently raised these arguments about the Supplier in response to my provisional decision in recent weeks despite having seen both the Lender's reliance on the LA and the Investigator's position on the matter a significant time ago.

As I've already noted the PR's arguments are not supported or substantiated by any persuasive evidence, contemporaneous to the purchase in Mr A's case or otherwise. And no such evidence has been put to the Lender for its consideration. The Lender can only consider the claim put to it and that evidence either submitted to it or that it discovers through its fair consideration of the claim.

I think it fair of the Lender to rely on the LA given the event complained about took place some time ago and it wouldn't be fair to expect lenders to have to answer stale and out of time claims. Furthermore, I don't think it would be fair to deprive the Lender here a defence it would otherwise be entitled to use.

Accordingly, I'm not persuaded the lender has treated Mr A unfairly here by not considering the matter further through the application of the LA.

In short, I'm not persuaded that this complaint about the Lender should be upheld.

### **My final decision**

It's my final decision that I've not upheld Mr A's complaint about that Mitsubishi HC Capital UK Plc trading as Novuna.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 13 May 2025.

Rod Glyn-Thomas  
**Ombudsman**