

## **The complaint**

Mr R's complaint is that Mitsubishi HC Capital UK PLC trading as Novuna Consumer Finance (the 'Lender') acted unfairly and unreasonably when deciding against paying his claim under Section 75 of the Consumer Credit Act 1974 (the 'CCA') and turning down his complaint that it was party to an unfair debtor-creditor relationship as defined by Section 140A of the CCA.

The complaint is only in Mr R's name as only he was named on the Credit Agreement. But, I will refer to both Mr and Mrs R throughout this decision as the timeshare in question was in both of their names.

## **What happened**

Mr and Mrs R purchased membership of a timeshare from a timeshare provider (the 'Supplier') on 5 April 2011 (the 'Time of Sale'). They bought 500 points at a cost of £5,699.

Under the terms of the purchase agreement, Mr and Mrs R could exchange their points for holidays.

Mr and Mrs R paid for their membership by taking finance from the Lender in Mr R's name. He entered into a 15-year loan for £5,699 and the total amount repayable after interest and charges was £16,106.40 (the 'Credit Agreement'). This loan was paid off in December 2011.

Mr and Mrs R wrote to the Lender via a professional representative (the 'PR1') on 16 February 2018 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.

As they hadn't received any response from the Lender, Mr and Mrs R then referred their complaint to the Financial Ombudsman Service on 20 April 2018.

The Lender then dealt with Mr and Mrs R's concerns as a complaint and subsequently issued its final response letter on 31 May 2018, rejecting it.

The complaint was assessed initially by an Investigator at this Service who, having considered the information on file, rejected the complaint on its merits on 4 December 2020.

The PR1, Mr and Mrs R's representative, disagreed with these findings and asked for the matter to be reviewed again.

In the meantime, Mr and Mrs R appointed a new representative (the 'PR2').

The complaint was then assessed by another Investigator who issued their findings on 14 November 2023. They said they felt Mr R had made his complaint too late, taking into account the Limitation Act 1980.

The PR2, on behalf of Mr and Mrs R, said they disagreed with these findings and asked for the matter to be referred to an Ombudsman for a final decision to be made.

The Investigator then issued an updated view on 30 April 2024. They maintained that Mr R's Section 75 claim had been made too late in relation to the Limitation Act 1980. They also said that his complaint regarding an unfair credit relationship had been made too late under

the time limits for bringing a complaint under the Financial Conduct Authority (FCA) DISP rules. So, our Service could not consider that aspect of the complaint.

The PR2 again disagreed and confirmed they still wanted the matter to be reviewed by an Ombudsman.

At this point they said, in summary, that they felt Section 32 of the Limitation Act 1980 meant Mr R's complaint had not been made too late. And, that Mr R couldn't have known about the issues in question until early 2018 when he spoke with a representative. They also said that in their view, the Credit Agreement was arranged by an unauthorised credit broker, the upshot of which is to suggest that the Lender wasn't permitted to enforce it.

As agreement on the outcome could not be reached, the complaint was referred to me to make a final decision.

I dealt with whether our Service has jurisdiction to consider Mr R's complaint that the credit relationship between himself and the Lender was unfair to him under Section 140A of the CCA, in a separate decision.

I then issued a provisional decision (the 'PD') which considered the merits of Mrs R's complaint about the way the Lender handled his claim under Section 75 of the CCA, his complaint about the Credit Agreement being arranged by an unauthorised credit broker and his complaint about commission being paid to the Supplier by the Lender which was not disclosed to him.

In that decision, I said:

**"Section 75 of the CCA: the Supplier's misrepresentations at the Time of Sale**

*I'll firstly address Mr R's Section 75 claim involving alleged misrepresentations at the Time of Sale.*

*In this part of Mr R's complaint, he is alleging that the Lender was unfair and unreasonable in refusing to allow his claim under Section 75 of the CCA. His complaint is that the Lender ought to have allowed it as there were misrepresentations made by the Supplier at the Time of Sale, and these misrepresentations induced him and Mrs R into making the purchase.*

*The Investigator in this case felt it would be reasonable for the Lender to reject this claim as they would have a defence to it under the LA.*

*Creditors can reasonably reject Section 75 claims that they're first informed about after the claim has become time-barred under the Limitation Act 1980. The reason being that 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.*

*Having considered everything, I think Mr R's claim was likely to have been made too late under the relevant provisions of the Limitation Act 1980, which means it would have been fair for the Lender to have turned down a Section 75 claim for this reason.*

*A claim under Section 75 is a 'like' claim against the creditor. A claim for misrepresentation against the Supplier would ordinarily be made under Section 2(1) of the Misrepresentation Act 1967. And, the limitation period to make such a claim expires six years from the date on which the cause of action accrued, as per Section 2 of the Limitation Act.*

*But a claim like this one under Section 75 is also "an action to recover any sum by virtue of any enactment" under Section 9 of the Limitation Act. The limitation period under that provision is also six years from the date on which the cause of action accrued.*

*The date on which the cause of action accrued was the Time of Sale. I say this because Mr and Mrs R entered into the membership at that time based on the alleged misrepresentations by the Supplier, which Mr R says they relied on. And, as the loan from*

*the Lender was used to finance this membership, it was when Mr R entered into the Credit Agreement that he suffered a loss.*

*Mr R first notified the Lender of his Section 75 claim on 16 February 2018. Since this was more than six years after the Time of Sale, I don't think it's unfair or unreasonable of the Lender to have rejected Mr R's concerns about the Supplier's alleged misrepresentations at the Time of Sale.*

*I acknowledge that the PR2 say that they don't think the limitation period started to run because certain information wasn't disclosed to Mr R, referring to Section 32 of the LA. But, I think this is based on a misunderstanding of the distinction between the rules which dictate our Service's jurisdiction and the rules set out in the LA. So, for this reason, I don't think the PR2's comments about Section 32 of the LA are relevant here. But, even if I'm wrong about that, I can't see that the reasons put forward by the PR2 for why they think Section 32 of the LA postpones the limitation period are relevant to the claim made.*

***The complaint about the Credit Agreement being unenforceable because it was arranged by a credit broker that was not regulated by the Office of Fair Trading (OFT) to carry out that activity***

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*The PR2, on Mr R's behalf, has stated that the Supplier, which was the entity that brokered the Credit Agreement, was not authorised to do so by the then regulating body (the OFT), the upshot of which is to suggest that the Lender wasn't permitted to enforce the Credit Agreement*

*The credit broker named on the Credit Agreement appears to be a subsidiary of the Supplier, and in the form that it is named it does not appear to have been licenced by the OFT at the time. The Lender says this was simply an administrative error on their part and the credit broker in this case was Club La Costa (UK) PLC Limited who did hold the appropriate licence from the OFT at the Time of Sale.*

*Further, the Supplier was suitably licenced, and I cannot see a reason why an unlicenced entity would have brokered this particular Credit Agreement, when the sale was completed by the representative of a duly licenced entity, and the same sales company was responsible for and had completed all the other parts of the sale.*

*But even if I am wrong about this, and an unlicenced entity brokered this particular Credit Agreement (and I don't think I am) it is not something that would warrant compensation being paid to Mr R in any event.*

*Section 27 of FSMA ("Agreements made through unauthorised persons") only applies to regulated activities, which in this case doesn't cover consumer credit lending prior to 1 April 2014.*

*In October 2019, the Regulator, the Financial Conduct Authority (the 'FCA') issued explanation and guidance relating to Validation Orders to allow an otherwise unenforceable credit agreement. This was last updated in October 2024. Insofar as it's relevant to Mr R's complaint, the FCA explanation says,*

*"For agreements entered into before 1 April 2014, a modified regime applies. [...] For agreements that were entered into before this date and which are unenforceable against the borrower, the borrower has no right to recover any money paid or other property transferred under the agreement or compensation for loss".*

*That aside, if Mr R's Credit Agreement was found to be unenforceable – and I make no such finding – it would normally mean that whilst the obligations under the agreement remain in*

*existence, one or both parties to the agreement can't enforce compliance in the courts. So, if the Lender took steps against Mr R to enforce the agreement, he might have a defence. However, I don't think this is relevant in Mr R's case because, from the information available, he repaid all amounts due under the Credit Agreement in full in December 2011. So, no such steps to enforce the agreement appear to have occurred.*

*In reality, Mr R took the finance from the Lender and subsequently repaid it. Mr R knew he had the finance, the amount borrowed and what it was for (the timeshare membership purchase). So, even if the loan was found to be improperly brokered, I haven't seen anything that persuades me that it resulted in something that would require the payment of compensation.*

### **Mr R's Commission Complaint**

*I note that one of Mr R's other concerns relates to alleged payment of commission by the Lender to the Supplier for acting as a credit broker and arranging the Credit Agreement. The Supreme Court's recent judgment *Johnson v FirstRand Bank Ltd, Wrench v FirstRand Bank Ltd and Hopcraft v Close Brothers Ltd* [2025] UKSC 33 ('Johnson, Wrench and Hopcraft') clarified the law on payments of commission – albeit in the context of car dealers acting as credit brokers. In my view, the Supreme Court's judgment sets out principles which appear capable of applying to credit brokers other than car dealer–credit brokers. At present, I do not know enough about the relevant arrangements in place at the Time of Sale. So, once I know more, I will finalise my findings on this complaint."*

In conclusion, I did not think that the Lender acted unfairly or unreasonably when it dealt with the relevant Section 75 claim and, and if I put the issue of commission to one side for the time being, I didn't see any other reason why it would be fair or reasonable to direct the Lender to compensate Mr R.

Following my provisional decision, I also communicated how I was not persuaded that this complaint should be upheld for reasons relating to the commission arrangements between the Lender and the Supplier.

The Lender did not respond to this, nor my PD. The PR2 did respond – they did not accept the PD and provided some further comments and evidence they wish to be considered.

Having received the relevant responses from both parties, I'm now finalising my decision.

### **The legal and regulatory context**

The legal and regulatory context that I think is relevant to this complaint is, in many ways, no different to that shared in several hundred published ombudsman decisions on very similar complaints – which can be found on the Financial Ombudsman Service's website. And with that being the case, it is not necessary to set out that context in detail here. But I would add that the following regulatory rules/guidance are also relevant:

#### **The Office of Fair Trading's Irresponsible Lending Guidance – 31 March 2010**

The primary purpose of this guidance was to provide greater clarity for businesses and consumer representatives as to the business practices that the Office of Fair Trading (the 'OFT') thought might have constituted irresponsible lending for the purposes of Section 25(2B) of the CCA. Below are the most relevant paragraphs as they were at the relevant time:

- Paragraph 2.2
- Paragraph 2.3
- Paragraph 5.5

## The OFT's Guidance for Credit Brokers and Intermediaries - 24 November 2011

The primary purpose of this guidance was to provide clarity for credit brokers and credit intermediaries as to the standards expected of them by the OFT when they dealt with actual or prospective borrowers. Below are the most relevant paragraphs as they were at the relevant time:

- Paragraph 2.2
- Paragraph 3.7
- Paragraph 4.8

### **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.

And having done that, I do not uphold this complaint.

Again, when making my decision, I'm required by DISP 3.6.4 R of the Financial Conduct Authority's handbook to take into account the:

*“(1) relevant:*

*(a) law and regulations;*

*(b) regulator's rules, guidance and standards;*

*I codes of practice; and*

*(2) ([when] appropriate) what [I consider] to have been good industry practice at the relevant time.”*

Where evidence is incomplete, inconclusive, or contradictory, I make my decision on the balance of probabilities i.e., what I think is more likely than not to have happened based on the evidence available and the wider circumstances of the complaint.

I think it's important to reiterate that my role as an Ombudsman isn't to address every single point which has been made to date, but to decide what is fair and reasonable in the circumstances of this complaint. If I haven't commented on, or referred to, something that either party has said, this doesn't mean I haven't considered it.

Rather, I've focused here on addressing what I consider to be the key issues in deciding this complaint and explaining the reasons for reaching my decision.

The PR2's further comments in response to the PD in the main relate to the complaint about the Credit Agreement being unenforceable because it was arranged by a credit broker that was not regulated by the Office of Fair Trading (OFT) to carry out that activity. And, Mr R's complaint about commission being paid to the Supplier by the Lender.

As outlined in my PD, both PRs originally raised various other points of complaint, all of which I addressed at that time. But the PR2 didn't make any further comments in relation to those in their response to my PD. Indeed, they haven't said they disagree with any of my provisional conclusions in relation to those other points. And since I haven't been provided with anything more in relation to those other points by either party, I see no reason to change my conclusions in relation to them as set out in my PD. So, I'll focus here on the PR2's points raised in response.

The PR2 has firstly reiterated that the relevant credit broker needed to have a licence from the OFT at the Time of Sale in order to arrange the Credit Agreement. The PR2 said this is something which could lead to an unfair credit relationship under S140A of the CCA. But, as explained above and in my PD, I've already dealt with that issue in a separate decision and

have explained that our Service does not have jurisdiction to consider Mr R's complaint that the credit relationship between himself and the Lender was unfair to him under Section 140A of the CCA. So, I'm unable to comment on that part of Mr R's complaint any further.

The PR2 also reiterated that without the relevant licence, the Credit Agreement is void. And, that under S27 of FSMA, because no validation order was obtained by the Lender, Mr R is entitled to receive back all of the money he has paid. But here, I don't think the PR2 has taken sufficient account of the part of my PD which explained the following:

*"In October 2019, the Regulator, the Financial Conduct Authority (the 'FCA') issued explanation and guidance relating to Validation Orders to allow an otherwise unenforceable credit agreement. This was last updated in October 2024. Insofar as it's relevant to Mr R's complaint, the FCA explanation says,*

*"For agreements entered into before 1 April 2014, a modified regime applies. [...] For agreements that were entered into before this date and which are unenforceable against the borrower, the borrower has no right to recover any money paid or other property transferred under the agreement or compensation for loss".*

*That aside, if Mr R's Credit Agreement was found to be unenforceable – and I make no such finding – it would normally mean that whilst the obligations under the agreement remain in existence, one or both parties to the agreement can't enforce compliance in the courts. So, if the Lender took steps against Mr R to enforce the agreement, he might have a defence. However, I don't think this is relevant in Mr R's case because, from the information available, he repaid all amounts due under the Credit Agreement in full in December 2011. So, no such steps to enforce the agreement appear to have occurred.*

*In reality, Mr R took the finance from the Lender and subsequently repaid it. Mr R knew he had the finance, the amount borrowed and what it was for (the timeshare membership purchase). So, even if the loan was found to be improperly brokered, I haven't seen anything that persuades me that it resulted in something that would require the payment of compensation." (my emphasis)*

The PR2 has also referred in their comments here to this point being 'time-barred' under the Limitation Act 1980 and sought to argue why that is not the case. But, that isn't a conclusion I reached in my PD in relation to this particular point so I think the PR2 has mis-read and/or misunderstood my PD here and is erroneously conflating the Limitation Act 1980 with our Service's jurisdiction under the Financial Conduct Authority's (FCA) DISP rules.

The PR2 suggested our Service should be making a referral to the FCA about the conduct of the credit broker and Supplier. But, whether to take such action is a decision for our Service ourselves to make, not at the direction of either party to a complaint. I note the PR2 has said they are considering taking this action themselves, and they are of course entitled to do so.

So again, while I've considered all of the PR2's submissions on this point, I haven't seen anything which persuades me that this is something which would require the payment of compensation to Mr R, even if the loan was improperly brokered at the Time of Sale.

In relation to the payment of commission by the Lender to the Supplier, the PR2 asked for the disclosure of various documents and suggested various documents that our Service should consider. And, said that if this information was not provided, we should draw adverse inferences on that basis.

I've already responded to the PR2's request here separately, but I think it's important to reiterate that it's up to our Service (and each individual Ombudsman) to decide what information we think we need in order to reach a fair outcome and this is not dictated by either party to the complaint. The evidence relied on (or an appropriate summary) has been provided and I'm satisfied both parties have been given sufficient opportunity to provide any further comments they wish to be considered.

The PR2's other comments regarding commission related to whether this made the credit relationship between Mr R and the Lender unfair under S140A of the CCA. But again, I've already explained our Service does not have jurisdiction to consider Mr R's complaint about an unfair credit relationship. So, I'm unable to comment on that part of Mr R's complaint any further.

Overall, therefore, for all of the reasons I already explained to both parties, I still can't see that a payment of commission from the Lender to the Supplier at the Time of Sale should lead me to uphold this complaint.

## **Conclusion**

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In conclusion, given the facts and circumstances of this complaint, I do not think that the Lender acted unfairly or unreasonably when it dealt with Mr R's Section 75 claim. And, having taken everything into account, I see no other reason why it would be fair or reasonable to direct the Lender to compensate Mr R.

## **My final decision**

For the reasons set out above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 9 March 2026.

Fiona Mallinson  
**Ombudsman**