

## The complaint

Mrs B's complaint is, in essence, that Mitsubishi HC Capital UK Plc trading as Novuna Personal Finance (the 'Lender') acted unfairly and unreasonably by deciding against paying claims under Section 75 of the CCA<sup>1</sup>.

## What happened

Mr and Mrs B were members of a timeshare provider (the 'Supplier') – having purchased a number of products from it over time. But the product at the centre of this complaint is their membership of a timeshare that I'll call the 'Fractional Club' – which they bought on 3 April 2013 (the 'Time of Sale'). They entered into an agreement with the Supplier to buy 3,540 fractional points at a cost of £7,750 (the 'Purchase Agreement') after trading in their existing timeshare.

Fractional Club membership was asset backed – which meant it gave Mr and Mrs B 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 and Mrs B paid for their Fractional Club membership by taking finance of £7,750 from the Lender (the 'Credit Agreement') in Mrs B's name only. Because of this only she can complain about the Credit Agreement. Mrs B paid off the loan, and the credit relationship ended, on 23 July 2013.

Mrs B – using a professional representative (the 'PR') – wrote to the Lender on 11 September 2020 (the 'Letter of Complaint') to raise a number of different concerns. As both sides are familiar with the concerns raised, it isn't necessary to repeat them in detail here beyond the summary above.

The Lender dealt with Mrs B's concerns as a complaint and issued its final response letter on 21 October 2020, rejecting it on every ground.

The complaint was then referred to the Financial Ombudsman Service. It was assessed by an Investigator who, having considered the information on file, rejected the complaint that the Lender hadn't properly considered a claim made under Section 75 of the CCA on its merits. And the Investigator said that the complaint that there was an unfair credit relationship under Section 140A hadn't been made in time as per the rules that this service must follow so it couldn't be considered.

Mrs B disagreed with the Investigator's assessment and asked for an Ombudsman's decision – which is why it was passed to me.

I issued a provisional decision explaining that I could only consider parts of the complaint, but that they should not be upheld.

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<sup>1</sup> The PR raised some additional concerns which it has since said it accepts would not lead to the complaint being upheld or are outside of my jurisdiction to consider, and so I do not need to cover these points in this final decision.

The Lender did not respond to my provisional decision.

The PR disagreed with my provisional decision and provided some comments it wanted me to consider when making my final decision.

I issued a separate decision confirming which parts of the complaint I could consider.

### **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.

Following the responses from both parties, I've considered the relevant parts of this complaint afresh and having done so, I've reached the same decision as that which I outlined in my provisional findings, a copy of which is below, for the same reasons. That is, I do not uphold this complaint.

START OF COPY OF PROVISIONAL FINDINGS

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

As a general rule, creditors can reasonably reject Section 75 claims that they are first informed about after the claim has become time-barred under the Limitation Act 1980 (the 'LA') as 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. So, it is relevant to consider whether Mrs B's Section 75 claim for misrepresentation was time-barred under the LA before he put it to the Lender.

As I mentioned above, a claim under Section 75 is a "like" claim against the creditor. It essentially mirrors the claim Mrs B could make against the Supplier.

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 (see Section 2 of the LA).

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. And 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 Mrs B entered the purchase of his timeshare at that time based on the alleged misrepresentations of the Supplier – which she says were relied upon. And as the loan from the Lender was used to help finance the purchase, it was when she entered into the Credit Agreement that she suffered a loss.

Mrs B first notified the Lender of his Section 75 claim on 21 October 2022. And as more than six years had passed between the Time of Sale and when that claim was first put to the Lender, I don't think it was unfair or unreasonable of the Lender to reject Mrs B's concerns about the Supplier's alleged misrepresentations.

### **Section 75 of the CCA: the Supplier's Breach of Contract**

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I have already summarised how Section 75 of the CCA works and why it gives consumers a right of recourse against a lender. So, it is not necessary to repeat that here other than to say that, if I find that the Supplier is liable for having breached the Purchase Agreement, the Lender is also liable.

As noted above when looking at the claim there was an unfair credit relationship, Mrs B says she could not holiday where and when she wanted to. On my reading of the complaint, this suggests that the Supplier was not living up to its end of the bargain, meaning it could be viewed as potentially breaching the Purchase Agreement. It is not clear precisely when this was alleged to have happened, but if it happened within six years of the time the complaint was first made, such a claim would not have been made too late under the LA.

Yet, like any holiday accommodation, availability was not unlimited – given the higher demand at peak times, like school holidays, for instance. Some of the sales paperwork likely to have been signed by Mrs B states that the availability of holidays was/is subject to demand. It also looks like she made use of her fractional points to holiday on several occasions. I accept that she may not have been able to take certain holidays. But I have not seen enough to persuade me that the Supplier had breached the terms of the Purchase Agreement.

So, from the evidence I have seen, I do not think the Lender is liable to pay Mrs B any compensation for a breach of contract by the Supplier. And with that being the case, I do not think the Lender acted unfairly or unreasonably in relation to this aspect of the complaint either.

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END OF COPY OF PROVISIONAL FINDINGS

In summary, the PR's further comments in response to the provisional decision which are relevant to the complaint about the Section 75 claims said that:

1. I had not properly applied the principles of the Limitation Act 1980, since Section 32(1)(b) provides more time to make the claim where the Supplier has concealed the misrepresentation.
2. Rule CONC 7.3.4R in the Financial Conduct Authority Handbook means that the Lender has a duty to treat customers fairly and consider evidence of fraud or misrepresentation – and this means the Lender should've investigated the claim rather than rejecting it.
3. I had failed to apply "*FOS technical guidance on linked lender liability, which requires that lender make reasonable enquiries rather than summarily dismissing such claims.*"

The PR's additional comments do not persuade me to depart from my provisional findings. It says that the Supplier concealed that "*the timeshare's alleged "asset-backed" nature was false*". But, as mentioned above, Mrs B's Fractional Club membership was asset-backed in that it was linked to the Allocated Property. That seems to have been made clear at the Time of Sale – both during the presentation Mrs B is likely to have been given, and in the documents provided to her at the time. So, I do not think this was "false", as the PR alleges. And I can't see that Section 32 of the Limitation Act provides more time for her to make the claim to the Lender.

As for the PR's second point, CONC 7.3.4R says:

*“A firm must treat customers in or approaching arrears or in default with forbearance and due consideration.”*

I cannot see that this means what the PR says, nor that it is relevant to Mrs B’s Section 75 claim. While there is a duty to treat customers fairly, I am not persuaded that the Lender unfairly rejected Mrs B’s Section 75 claims.

Finally, the PR has not specified what technical guidance it is referring to. But I am satisfied I have followed our usual approach when deciding this complaint. As such, for the reasons given in my provisional findings above, I do not uphold this complaint.

### **My final decision**

For the reasons I’ve explained, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mrs B to accept or reject my decision before 16 March 2026.

Phillip Lai-Fang  
**Ombudsman**