

The complaint

Mr F'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'), (2) deciding against paying claims under Section 75 of the CCA, (3) irresponsible or unaffordable lending and (4) the credit being arranged by an unauthorised broker.

What happened

Mr F purchased membership of a timeshare (the 'Fractional Club') from a timeshare provider (the 'Supplier') on 12 September 2011 (the 'Time of Sale'). He entered into an agreement with the Supplier to buy 1,050 fractional points at a cost of £6,000 (the 'Purchase Agreement') after trading in an existing timeshare.

Fractional Club membership was asset backed – which meant it gave Mr 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 his membership term ends.

Mr F paid for his Fractional Club membership by taking finance of £6,000 from the Lender (the 'Credit Agreement'). Mr F paid off the loan, and his relationship with the Lender ended, on 23 November 2011.

Mr F – using a professional representative (the 'PR') – wrote to the Lender on 7 August 2020 (the 'Letter of Complaint') to raise several different concerns. Since then, the PR has raised some further matters it says are relevant to this outcome of the complaint – points (3) and (4) above. 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 Mr F's concerns as a complaint and issued its final response letter on 15 April 2021, 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 complaints that the Lender hadn't properly considered a claim made under Section 75 of the CCA and about unaffordable or irresponsible lending on their merits. The Investigator felt 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 and that it couldn't be considered.

Mr F 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 the complaints about I was not planning to uphold the complaints about the Lender (2) deciding against paying claims under Section 75 of the CCA, (3) irresponsible or unaffordable lending and (4) the credit being arranged by an unauthorised broker, since the complaint about the Lender (1) being party to an unfair credit relationship with Mr F under Section 140A of the Consumer Credit Act 1974 (as amended) (the 'CCA') was made too late under our rules.

I issued a jurisdiction decision confirming I could only look at complaint points (2), (3) and (4). In response to my provisional decision, insofar as that was about the merits of those complaint points, the PR disagreed and provided some further comments which I summarise and deal with at the end of this decision.

I later sent an email to both sides explaining I did not find reason to uphold the complaint due to the Lender paying commission to the Supplier and allegedly failing to disclose this properly to Mr F. The PR said it accepted those provisional findings and the Lender didn't respond.

This final decision explains why I am not upholding this complaint and is in line with my provisional findings, a copy of which are below.

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 case 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 broadly the same reasons. That is, I do not uphold this complaint.

START OF COPY OF PROVISIONAL FINDINGS

Section 75: 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 Mr F'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 Mr F 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 Mr F entered into the purchase of his timeshare at that time based on the alleged misrepresentations of the Supplier – which he says he relied upon. And as the loan from the Lender was used to help finance the purchase, it was when he entered into the Credit Agreement that he suffered a loss.

Mr F first notified the Lender of his Section 75 claim on 7 August 2020. 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 Mr F's concerns about the Supplier's alleged misrepresentations.

Section 75: the Supplier's Breach of Contract

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, Mr F says that he could not holiday where and when he 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 Mr F states that the availability of holidays was/is subject to demand. It also looks like he made use of his fractional points to holiday on a number of occasions. I accept that he 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 Mr F 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.

Complaint about irresponsible or unaffordable lending

Although the event complained of was more than six years before Mr F complained about it, it is not clear to me that he became aware (or ought reasonably to have become aware) of this until after engaging the PR in April 2020. And the complaint was made within three years of this. So, I have jurisdiction to consider the merits of the complaint.

The PR says that the right checks weren't carried out before the Lender lent to Mr F. I haven't seen anything to persuade me that was the case in this complaint given its circumstances, nor that the money lent to Mr F was unaffordable. So, from the information provided, I am not persuaded that the lending was irresponsible or unaffordable at the Time of Sale.

Complaint about the credit being arranged by an unauthorised credit intermediary

Although the event complained of was more than six years before Mr F complained about it, it does not appear that he became aware (or ought reasonably to have become aware) of this until after engaging the PR in April 2020. And the complaint was made within three years of this. So, I have jurisdiction to consider the merits of the complaint.

The PR alleges that 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 the Credit Agreement.

However, Mr F knew, amongst other things, how much he was borrowing and repaying each month, who he was borrowing from and that he was borrowing money to pay for Fractional Club membership. And as the lending doesn't look like it was unaffordable for Mr F, even if the Credit Agreement was arranged by a broker that didn't have the necessary permission to

do so (which I make no formal finding on), I can't see why that caused Mr F a financial loss – such that it would be fair and reasonable to tell the Lender to compensate Mr F, even if the loan wasn't arranged properly.

Mr F's concerns about commission

In relation to Mr F's concerns about commission in this case, I think the following regulatory rules/guidance are 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

My findings in relation to commission

Mr F says that a payment of commission from the Lender to the Supplier at the Time of Sale should lead me to uphold this complaint because, simply put, information in relation to that payment went undisclosed at the Time of Sale.

As both sides already know, the Supreme Court handed down an important judgment on 1 August 2025 in a series of cases concerned with the issue of commission: *Johnson v FirstRand Bank Ltd*, *Wrench v FirstRand Bank Ltd* and *Hopcraft v Close Brothers Ltd* [2025] UKSC 33 ('Hopcraft, Johnson and Wrench').

The Supreme Court ruled that, in each of the three cases, the commission payments made to car dealers by lenders were legal, as claims for the tort of bribery, or the dishonest assistance of a breach of fiduciary duty, had to be predicated on the car dealer owing a fiduciary duty to the consumer, which the car dealers did not owe. A "disinterested duty", as described in *Wood v Commercial First Business Ltd & ors and Business Mortgage Finance 4 plc v Pengelly* [2021] EWCA Civ 471, is not enough.

However, the Supreme Court held that the credit relationship between the lender and Mr Johnson was unfair under Section 140A of the CCA because of the commission paid by the lender to the car dealer. The main reasons for coming to that conclusion included, amongst other things, the following factors:

1. The size of the commission (as a percentage of the total charge for credit). In Mr Johnson's case it was 55%. This was "so high" and "a powerful indication that the relationship...was unfair" (see paragraph 327);
2. The failure to disclose the commission; and
3. The concealment of the commercial tie between the car dealer and the lender.

The Supreme Court also confirmed that the following factors, in what was a non-exhaustive list, will normally be relevant when assessing whether a credit relationship was/is unfair under Section 140A of the CCA:

1. The size of the commission as a proportion of the charge for credit;
2. The way in which commission is calculated (a discretionary commission arrangement, for example, may lead to higher interest rates);
3. The characteristics of the consumer;
4. The extent of any disclosure and the manner of that disclosure (which, insofar as Section 56 of the CCA is engaged, includes any disclosure by a supplier when acting as a broker); and
5. Compliance with the regulatory rules.

From my reading of the Supreme Court's judgment in *Hopcraft, Johnson and Wrench*, it sets out principles which apply to credit brokers other than car dealer-credit brokers. So, when considering allegations of undisclosed payments of commission like the one in this complaint, *Hopcraft, Johnson and Wrench* is relevant law that I'm required to consider under Rule 3.6.4 of the Financial Conduct Authority's Dispute Resolution Rules ('DISP').

But I don't think *Hopcraft, Johnson and Wrench* assists Mr F in arguing that his credit relationship with the Lender was unfair to him for reasons relating to commission given the facts and circumstances of this complaint.

I haven't seen anything to suggest that the Lender and Supplier were tied to one another contractually or commercially in a way that wasn't properly disclosed to Mr F, nor have I seen anything that persuades me that the commission arrangement between them gave the Supplier a choice over the interest rate that led Mr F into a credit agreement that cost disproportionately more than it otherwise could have.

I acknowledge that it's possible that the Lender and the Supplier failed to follow the regulatory guidance in place at the Time of Sale insofar as it was relevant to disclosing the commission arrangements between them.

But as I've said before, regulatory breaches do not automatically create unfairness. Such breaches and their consequences (if there are any) must be considered in the round, rather than in a narrow or technical way. And with that being the case, it isn't necessary to make a formal finding on that because, even if the Lender and the Supplier failed to follow the relevant regulatory guidance at the Time of Sale, it is for the reasons set out below that I don't think any such failure is itself a reason to find the credit relationship in question unfair to Mr F.

Based on what I've seen, the Supplier's role as a credit broker wasn't a separate service and distinct from its role as the seller of timeshares. It was simply a means to an end in the Supplier's overall pursuit of a successful timeshare sale. I can't see that the Supplier gave an undertaking – either expressly or impliedly – to put to one side its commercial interests in pursuit of that goal when arranging the Credit Agreement. And as it wasn't acting as an agent of Mr F but as the supplier of contractual rights that he obtained under the Purchase Agreement, the transaction doesn't strike me as one with features that suggest the Supplier had an obligation of 'loyalty' to him when arranging the Credit Agreement and thus a

fiduciary duty.

What's more, in stark contrast to the facts of Mr Johnson's case, the Lender didn't pay the Supplier any commission at the Time of Sale. And with that being the case, even if there were information failings at that time and regulatory failings as a result (which I make no formal finding on), I'm not persuaded that the commission arrangements between the Supplier and the Lender mean that I should uphold this complaint.

END OF COPY OF PROVISIONAL FINDINGS

The PR's response to my provisional decision

In summary, the PR's further comments in response to the provisional decision, insofar as they are relevant to the complaint points I can consider, said the following – which is all in relation to the complaint about the Lender (2) deciding against paying claims under Section 75 of the CCA:

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. The PR says that the Supplier concealed that *“the timeshare's alleged “asset-backed” nature was false”*. But, as mentioned above, Mr F'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 Mr F is likely to have been given, and in the documents provided to him 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 Mr F to make a Section 75 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 Mr F's Section 75 claim. While there is a duty to treat customers fairly, I am not persuaded that the Lender unfairly rejected Mr F'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 Mr F to accept or reject my decision before 19 February 2026.

Phillip Lai-Fang
Ombudsman