

## **The complaint**

Mr P'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'), (2) deciding against paying a claim under section 75 of the CCA, and (3) lending to him irresponsibly by failing to ensure he could afford the loan.

## **Background to the complaint**

Mr P and a third party purchased membership of a timeshare (the 'Fractional Club') from a timeshare provider (the 'Supplier') on 25 July 2012 (the 'Time of Sale'). They entered into an agreement with the Supplier to buy 2,766 fractional points at a cost of £41,448 (the 'Purchase Agreement'). But after trading in their existing timeshare, they ended up paying £8,899.

Mr P paid for their Fractional Club membership by taking finance of £8,899 from the Lender (the 'Credit Agreement') in his sole name. The loan was settled on 8 November 2013.

Mr P – using a professional representative (the 'PR') – wrote to the Lender on 5 May 2021 (the 'Letter of Complaint') 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.

The Lender dealt with Mr P's concerns as a complaint and issued its final response letter on 4 October 2021, rejecting it on every ground. In particular, it said that the section 75 claim was time-barred under the Limitation Act 1980.

Meanwhile, the complaint had been referred to the Financial Ombudsman Service. It was assessed by an Investigator who, having considered the information on file, rejected the complaint. He agreed that the section 75 claim had been brought too late and that this gave the Lender a defence to the claim. But he also thought that the rest of this complaint had been brought too late under our rules, and so he was unable to consider it on its merits.

Mr P disagreed with the Investigator's assessment and asked for an ombudsman's decision – which is why it was passed to me.

## **The legal and regulatory context**

In considering what is fair and reasonable in all the circumstances of the complaint, I am required under DISP 3.6.4R to take into account: relevant (i) law and regulations; (ii) regulators' rules, guidance and standards; and (iii) codes of practice; and (where appropriate), what I consider to have been good industry practice at the relevant time.

The legal and regulatory context that I think is relevant to this complaint is no different to that shared in several hundred ombudsman decisions on very similar complaints. And with that being the case, it is not necessary to set it out here.

## 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 currently think this complaint should be upheld.

However, before I explain why, I want to make it clear that my role as an ombudsman is not to address every single point that has been made to date. Instead, it is to decide what is fair and reasonable in the circumstances of this complaint. So, if I have not commented on, or referred to, something that either party has said, that does not mean I have not considered it.

I will begin with my jurisdiction to consider this complaint.

Our jurisdiction is set out in rules made by the Financial Conduct Authority. These rules include time limits on bringing a complaint to our Service. These say we can normally only consider a complaint if it was made within six years of the event complained of, or (if later) within three years from the date on which the complainant became aware "*or ought reasonably to have become aware*" that he had cause for complaint. We can still consider a late complaint if it was late as a result of exceptional circumstances.

For the purposes of a claim under section 140A of the CCA, the time under the six-year time limit begins to run when the credit relationship between the debtor and the creditor ends. In this instance, that was when the loan was settled in November 2013. So I'm satisfied that Mr P's claim was brought after the deadline had expired.

I don't think the three-year time limit assists him here. Mr P knew that he had cause to complain at the Time of Sale, because that was when he says he was subjected to high pressure sales techniques (one of the things he complained about), for example. And I have not been told about any exceptional circumstances that would explain why he could not have complained earlier.

So I am satisfied that I do not have jurisdiction to consider the unfairness complaint. For the same reasons, I cannot consider the irresponsible lending complaint either.

The position is different when it comes to a claim under section 75. For the purposes of my jurisdiction, time runs not from when the Credit Agreement was entered into or from the alleged misrepresentation, but from when the Lender failed to uphold Mr P's claim under that section, which was in 2021. So I certainly have jurisdiction to consider his complaint about that.

However, under the Limitation Act Mr P had six years from the Time of Sale in which to bring a complaint about misrepresentation, so I agree with the Lender that his section 75 claim was brought out of time, and that this gives the Lender a complete defence to his claim.

For a claim about alleged breaches of contract, time runs from each individual breach, so it is *possible* that there may be some breaches which occurred less than six years before Mr P brought his claim. However, I don't think section 75 applies here. Certain conditions must be met for that section to be engaged, and one of these is that the cash price of the purchase does not exceed £30,000. But the cash price of Mr P's fractional points was £41,448.

Section 75A of the CCA applies to purchases with a cash price higher than that threshold. But it does not apply to breaches of contract. And while it does apply to misrepresentation, the limitation period is the same as for section 75.

So I think that the Lender was entitled to decline Mr L's section 75 claim, and that it did not need to consider his claim under section 75A instead.

### **My final decision**

My decision is that much of this complaint falls out of our service's jurisdiction because it was brought out of time, and the rest of this complaint fails on its merits.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 5 December 2025. But this decision brings this complaint to an end.

Richard Wood  
**Ombudsman**