

The complaint

Mr L'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') and (2) deciding against paying claims under Section 75 of the CCA.

What happened

Mr L and Mrs L were members of a timeshare provider (the 'Supplier') – having purchased several 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 27 February 2013 (the 'Time of Sale'). They entered into an agreement (the 'Purchase Agreement') with the Supplier to buy 1494 fractional points at a cost of £12,588.

Fractional Club membership was asset backed – which meant it gave Mr L and Mrs L 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 L paid for their Fractional Club membership by taking finance of £12,588 from the Lender (the 'Credit Agreement').

Mr L – using a professional representative (the 'PR') – wrote to the Lender on 30 August 2022 (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 L's concerns as a complaint and issued its final response letter on 16 September 2022, rejecting it on every ground.

The complaint was then referred to the Financial Ombudsman Service on 16 November 2022 and it was assessed by an Investigator. Having considered the information on file he concluded that we didn't have jurisdiction to consider the Section 140A complaint because it had been made too late. He also rejected the Section 75 complaint on its merits because the Lender had a complete defence to such claims under the Limitation Act 1980 ("LA") as it had been made more than six years from the Time of Sale.

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

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.

However, I have first considered all the available evidence and arguments to decide whether our jurisdiction allows me to consider Mr L's complaint.

Having done so my conclusions are that:

1. Mr L's complaints about the Lender being party to an unfair credit relationship with him under Section 140A CCA and irresponsible lending are not within our jurisdiction as they have been made too late.
2. Mr L's complaint about the Lender not accepting the claim made under Section 75 CCA has been made in time and is within our jurisdiction but the Lender hasn't acted unfairly as regards rejecting the complaint.

I set out below why I have come to the above conclusions.

Do we have the jurisdiction to consider this complaint?

The rules about our jurisdiction are set out in the Handbook of the Financial Conduct Authority under 'DISP Dispute Resolution: Complaints'. There are various jurisdiction rules but the only one that is in issue in this complaint are the rules about the time limits for bring a complaint. These are set out in DISP 2.8.2R and the relevant parts, for the purposes of this complaint, say as follows:

"The Ombudsman cannot consider a complaint if the complainant refers it to the Financial Ombudsman Service:

(1)

(2) more than:

(a) six years after the event complained of; or (if later)

(b) three years from the date on which the complainant became aware (or ought reasonably to have become aware) that he had cause for complaint;

unless the complainant referred the complaint to the respondent or to the Ombudsman within that period and has a written acknowledgement or some other record of the complaint having been received;

unless:

(3) in the view of the Ombudsman, the failure to comply with the time limits in DISP 2.8.2 R or DISP 2.8.7 R was as a result of exceptional circumstances; or

(4)

(5) the respondent has consented to the Ombudsman considering the complaint where the time limits in DISP 2.8.2 R or DISP 2.8.7 R have expired (but this does not apply to a "relevant complaint" within the meaning of section 404B(3) of the Act).

Mr L's Section 140A complaint

The six year time limit in DISP 2.8.2R(2)(a) requires that a complaint must be referred to us no more than six years from the 'event' complained about. The event that Mr L is complaining about is that the Lender was party to and/or perpetuated an unfair credit relationship which it didn't try and remedy.

Insofar as there was any unfairness in that relationship, the Lender needed to take action to either remove that unfairness or to mitigate its effects so the relationship didn't remain unfair and this obligation was ongoing throughout the relationship and as such time didn't start to run for making a complaint until the relationship came to an end.

Information I have seen in another complaint by Mr L shows that the credit relationship between him and the Lender ended on 8 June 2015, when the loan the subject of the Credit Agreement was paid off by consolidation. Mr L had six years from then to make his complaint. So, he had until 8 June 2021 to make his complaint to the business or refer it to our service to come within the six year time limit.

Mr L complained to the Lender on 30 August 2022 and referred his complaint to our service on 16 November 2022. So, his complaint about the Lender being party to an unfair credit relationship has been made too late under the six year time limit.

That leaves me to consider the three year time limit under DISP 2.8.2R(2)(b), which would allow us to consider the merits of the complaint if it has been made no more than three years from when Mr L was aware, or ought reasonably to have become aware, he had cause to complain.

The Letter of Complaint raises several issues that go to the fairness of the credit relationship between Mr L and the Lender. He has complained about being misled as to the holiday accommodation being available all year round and to there being unfair terms in the Purchase Agreement.

But Mr L will have seen the terms of Fractional Club membership at the Time of Sale and will have been provided with a copy of these which would have shown that the holiday accommodation wasn't available to him throughout the year and the alleged unfair terms that Mr L refers to. In the circumstances it is reasonable to expect him to have been aware that he didn't have access to the holiday accommodation when he wanted and to there being unfair terms in the Purchase Agreement at the Time of Sale or shortly afterwards. He would also have been aware he had potentially suffered a loss because of those issues, given his financial obligations arising from the Purchase Agreement and Credit Agreement he agreed.

Mr L would have known that the Supplier was one party that could be responsible for potential losses arising from what it had done wrong. But he also knew that he had only been able to go ahead with the purchase through the finance provided by the Lender, which finance the Supplier had brokered. And given the significant and long-term financial consequences to Mr L arising from him entering into the Purchase Agreement and Credit Agreement it is reasonable to have expected him to make enquiries into his rights when he first became aware of issues with his Fractional Club membership.

I am reinforced in that view by the fact that Fractional Club membership was complex, involving not just holiday rights but also an investment element arising from having a share in property. Given this complexity, it is reasonable to have expected Mr L to make enquiries into his rights when he became aware of issues with his membership. And it is reasonable to find that such enquiries would have identified that the Lender could have responsibility for the issues with his Fractional Club membership that he has identified.

With the above in mind, allowing Mr L a reasonable time to make the enquiries I refer to above, he ought reasonably to have become aware he had cause to complain to the Lender by the latest by June 2015 when the Credit Agreement ended. The three year time limit would therefore only take Mr L to June 2018, which means it doesn't apply as it isn't later than the six year time limit (8 June 2021).

Irresponsible Lending

Mr L says the Lender didn't conduct appropriate credit checks and that this amounted to irresponsible lending. In effect he is saying that the loan wasn't affordable to him. This is something I think it is reasonable to think that Mr L would have been aware of when he

started making the payments under the Credit Agreement , so within a month or two of the Time of Sale. Even if for some reason he wasn't aware of the loan being unaffordable when he started making payments there is no reason to think that he wouldn't have understood this by the time the loan was repaid by way of consolidation in June 2015 given he would have been making payments for over two years by that time.

So he was aware, or ought reasonably to have become aware, he had cause to complain to the Lender about irresponsible lending at the latest by June 2015 and given that this means the three year time limit again only takes him to June 2018 it doesn't apply as it isn't later than the six year time limit, as I have already noted above.

I can consider a complaint made outside of the time limits I have discussed above if the Lender consents or if there are exceptional circumstances. The Lender has not consented and I have seen no evidence that establishes that there are exceptional circumstances why the above complaint wasn't made in time. In the circumstances the complaint about the Lender being party to an unfair credit relationship has been made too late.

Mr L's Section 75 complaint

Different considerations apply when looking at a complaint made under Section 75 CCA, as the event complained about is the Lender's refusal to accept a claim under Section 75. In short what this means is that the six year time limit only starts when the Lender refused the complaint, which in this case is when its final response letter of 16 September 2022 was received by Mr L. So, his complaint under Section 75 CCA referred to us on 16 November 2022 has been made in time.

The merits of Mr L's Section 75 complaint

Having decided that I do have jurisdiction to consider the complaint made under Section 75 CCA I have gone on to consider the merits of that complaint. Having done so I don't think this part of the complaint should be upheld. I have come to that conclusion because, whilst the complaint has been made in time under the rules under which our service operates, the Lender can still reasonably reject a claim made under Section 75 if it has been made outside the time limits in the LA.

A claim against the Lender mirrors the claim that could be made against the Supplier. And a claim against the Supplier for misrepresentations made at the Time of Sale would ordinarily be made under Section 2(1) of the Misrepresentation Act 1967. Under Section 2 of the LA the limitation period for such a claim expires six years from when the cause of action accrued.

The claim made by Mr L under Section 75 could also come under Section 9 of the LA (an action to recover any sum by virtue of any enactment). However the limitation period under Section 9 is again six years from when the cause of action accrued.

Mr L's cause of action accrued at the Time of Sale. This is when he entered into the Purchase Agreement and Credit Agreement and suffered a loss in doing so which he says he wouldn't have done but for the alleged misrepresentations by the Supplier at the time.

So, under the LA Mr L had until February 2019 – six years from the Time of Sale – to make a claim against the Lender. Mr L first complained to the Lender about the misrepresentation of the Supplier in his Letter of Complaint dated 16 November 2022. So he has not made a claim against the Lender within the six year limitation period I have specified above. It wasn't unfair or unreasonable for the Lender to reject the complaint about the Supplier's alleged misrepresentations given this.

My final decision

For the reasons set out above, I cannot consider Mr L's Section 140A complaint or his complaint about irresponsible lending because those complaints have been made too late and I don't uphold his Section 75 complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 15 December 2025.

Philip Gibbons
Ombudsman