

The complaint

Mr A complains that Mitsubishi HC Capital UK Plc trading as Novuna Personal Finance¹ ('Novuna') is liable to pay him compensation under the Consumer Credit Act 1974 (as amended) (the 'CCA') following a complaint made about a timeshare bought using credit it provided.

The timeshare in question was bought in the joint names of Mr and Mrs A, but as the relevant credit agreement was in Mr A's name only, he is the only eligible complainant here. I will, however, refer to both Mr and Mrs A where it is appropriate to do so.

What happened

Mr and Mrs A purchased membership of a timeshare (the 'Fractional Club') from a timeshare provider (the 'Supplier') on 13 August 2013 (the 'Time of Sale'). They entered into an agreement with the Supplier to buy 1,500 fractional points at a cost of £17,999 (the 'Purchase Agreement').

Mr A paid for their Fractional Club membership by taking finance from Novuna for £17,999 in his sole name (the 'Credit Agreement'). The outstanding balance of this loan was cleared by Mr A on 30 January 2015.

Mr and Mrs A traded in their Fractional Club membership towards an 'upgraded' version on 16 April 2014, so the Purchase Agreement was terminated on that date.

On 5 January 2022, using a professional representative (the 'PR'), Mr A wrote to Novuna (the 'Letter of Complaint') to complain about:

1. Misrepresentations by the Supplier at the Time of Sale giving them a claim against Novuna under Section 75 of the CCA.
2. A breach of contract by the Supplier giving them a claim against Novuna under Section 75 of the CCA.
3. Novuna being party to an unfair credit relationship under the Credit Agreement and related Purchase Agreement for the purposes of Section 140A of the CCA.
4. Novuna paying undisclosed commission to the Supplier as a result of it arranging the Credit Agreement.

As these complaints 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.

Novuna dealt with Mr A's concerns as a complaint, and it issued its final response letter on 2 February 2022, rejecting it on all grounds.

¹ At the time the loan was agreed, the Lender was trading as Hitachi Personal Finance

As a result, the PR referred their complaint to the Financial Ombudsman Service, where it was assessed by an Investigator.

The Investigator thought there were parts of the complaint that this Service didn't have jurisdiction to consider, and the remaining parts ought not to be upheld.

Mr A did not accept this and asked for an Ombudsman's decision, which is why it came to me.

The provisional decision

Having considered everything, I thought that part of Mr A's complaint, specifically that Novuna was party to an unfair credit relationship under Section 140A of the CCA, was made too late, so was not in the jurisdiction of this Service. But the merits of his other complaints, relating to how Novuna dealt with his claims under Section 75 of the CCA, and his complaint that there was undisclosed commission paid to the Supplier by Novuna, could be considered as they were made in time under the regulator's rules. I set out my initial thoughts on this Service's jurisdiction in a provisional decision (the 'PD').

Neither side had anything further to add in response to the PD, so, and having considered everything again, I decided that Mr A's complaint that Novuna was party to an unfair credit relationship with him under Section 140A of the CCA had been made too late, so was not in the jurisdiction of this Service.

As part of the PD, I also set out my initial thoughts on the merits of Mr A's complaint about Novuna's handling and response to his claims under Section 75 of the CCA, and his complaint that Novuna had paid the Supplier a commission which had not been disclosed to him. My PD said:

"Mr A's claims under Section 75 of the CCA – merits

The CCA introduced a regime of connected lender liability under Section 75 that affords consumers ("debtors") a right of recourse against lenders that provide the finance for the acquisition of goods or services from third-party merchants ("suppliers") in the event that there is an actionable misrepresentation and/or breach of contract by the supplier.

Certain conditions must be met if the protection afforded to consumers is engaged, including, for instance, the cash price of the purchase and the nature of the arrangements between the parties involved in the transaction, and these relevant conditions appear to have been met here.

However, the Limitation Act 1980 (the 'LA') imposes time limits for people to start legal proceedings – and there are different time limits for different types of claims. Essentially, this means that if someone waits too long to make a claim, the court will usually say it's 'time-barred'. For this reason, if a consumer makes a claim after the relevant time-limit has expired, this Service would usually say it was fair for the creditor to rely on the LA to decline the claim.

A claim under Section 75 is a "like" claim against the creditor. It essentially mirrors the claim a consumer could make against the Supplier.

The limitation period to make a claim against Novuna for alleged misrepresentations and/or a breach of contract by the Supplier expires six years from the date on which Mr A had everything he needed to make such a claim.

As the letter of complaint to Novuna makes clear, Mr and Mrs A made their purchase of the Fractional Club membership on 13 August 2013. And Mr A says they made this purchase based on the alleged misrepresentations of the Supplier, which he says they relied on. And as a loan from Novuna was used to help finance the purchase, it was when Mr A (as the debtor) entered into the Credit Agreement that he suffered a loss – which means it was at that time that he had everything he needed to make a claim.

So, Mr A needed to notify Novuna of his claim of misrepresentation by 13 August 2019. But Mr A first notified Novuna of his claim for alleged misrepresentations by the Supplier on 5 January 2022. As that was more than six years after he entered into the Credit Agreement and related Purchase Agreement, I don't think it would have been unfair or unreasonable of Novuna to rely on the LA to decline the claim. As such I do not think Novuna needs to do anything further in relation to his claim for misrepresentation.

But Mr A also says that he and Mrs A could not holiday where and when they wanted to – which, on my reading of the complaint, suggests that the Supplier was not living up to its end of the bargain, potentially breaching the Purchase Agreement. But because I can see the contract that is being complained about was terminated on 16 April 2014, when it was traded in towards a new contract, it seems clear that any breach of the original contract must have occurred before 16 April 2014.

So, like a claim for misrepresentation, Mr A had to notify Novuna of his claim for a breach of contract within six years of the date that the said breach occurred. Which, in this case, must have been before 16 April 2014. But as I've said, he didn't make his claim until 5 January 2022. As that was more than six years after any breach of contract must have occurred, I don't think it would have been unfair or unreasonable of Novuna to rely on the LA to decline the claim. As such I do not think Novuna needs to do anything further in relation to his claim for breach of contract either.

Section 75 - conclusion

In conclusion, as things currently stand, I do not think that Novuna acted unfairly or unreasonably when it dealt with the relevant Section 75 claims, so it does not need to do anything further in this regard.

Mr A's Commission Complaint

*I note that one of Mr A's other concerns relates to alleged payments of commission by Novuna 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. So, once the implications of that judgment become clear, I will finalise my findings on this aspect of Mr A's complaint."*

The responses to the provisional decision

Novuna didn't respond to the PD. The PR, on Mr A's behalf, did not accept it, but provided no further evidence that it wished me to consider.

Following this, and further to my PD, I set out to both sides how I was not persuaded that the commission arrangements between Novuna and the Supplier were such that they merited an award being made to Mr A. I said:

“While I’ve found that the complaint that Mr [A]’s credit relationship with the Lender was unfair isn’t in the jurisdiction of the Financial Ombudsman Service, two of the grounds of complaint relating to the commission arrangements between the Lender and the Supplier also constitute separate and freestanding complaints. So, for completeness, I’ve considered those grounds on that basis here.

The first ground relates to the Lender’s compliance with the regulatory guidance in place at the Time of Sale² insofar as it was relevant to disclosing the commission arrangements between them, and the second relates to whether the Lender is liable for the dishonest assistance of a breach of fiduciary duty by the Supplier because it took a payment of commission from the Lender without telling Mr [A] (i.e., secretly).

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’).

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 regulatory breaches do not automatically mean a remedy is due. 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 currently think any such failure is itself a reason to require the Lender to pay compensation to Mr [A].

In stark contrast to the facts of Mr Johnson’s case, the amount of commission paid by the Lender to the Supplier for arranging the Credit Agreement that Mr [A] entered into wasn’t high. At £1,754.90, it was only 9.75% of the amount borrowed and even less than that (8.71%) as a proportion of the charge for credit. So, had he known at the Time of Sale that the Supplier was going to be paid a flat rate of commission at that level, I’m not currently persuaded that Mr [A] either wouldn’t have understood that or would have otherwise questioned the size of the payment at that time. After all, Mr [A] wanted Fractional Club membership and had no obvious means of their own to pay for it. And at such a low level, the impact of commission on the cost of the credit he needed for a timeshare they wanted doesn’t strike me as disproportionate. So, I think Mr [A] would still have taken out the loan to fund their purchase at the Time of Sale had the amount of commission been disclosed.

What’s more, based on what I’ve seen so far, 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

² The Office of Fair Trading guidance/CONC

wasn't acting as an agent of Mr [A] but as the supplier of contractual rights 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.

So, for the reasons I set out above, I'm not persuaded that the Supplier – when acting as credit broker – owed Mr [A] a fiduciary duty. So, the remedies that might be available at law in relation to the payment of secret commission aren't, in my view, available to him. And while it's possible that the Lender failed to follow the regulatory guidance in place at the Time of Sale insofar as it was relevant to disclosing the commission arrangements between it and the Supplier, I don't think any such failure on the Lender's part is itself a reason to uphold this complaint because, for the reasons I also set out above, I think Mr [A] would still have taken out the loan to fund his purchase at the Time of Sale had there been more adequate disclosure of the commission arrangements that applied at that time.

So, because of all of the above, I do not think that the commission arrangements in place at the time the Credit Agreement was arranged are reasons to uphold this complaint.”

The PR responded to say it had nothing further to add.

Having received the relevant responses from both sides, I am now finalising my decision.

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, 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.

Following the responses from both sides, I've considered the case afresh. And having done so, and because no new evidence has been submitted or arguments made in response to my initial findings, I see no reason to depart from the outcome as set out above.

Given the facts and circumstances of this complaint, I do not think that Novuna acted unfairly or unreasonably when it dealt with Mr A's Section 75 claims, and having considered everything, I see no other reason why it would be fair or reasonable to direct Novuna to compensate Mr A.

My final decision

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 10 February 2026.

Chris Riggs
Ombudsman