DRN-5946750

The complaint

Mr D'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 them under section 140A of the Consumer Credit Act 1974 (as amended) (the 'CCA'), (2) deciding against paying claims under section 75 of the CCA, and (3) lending to him irresponsibly by failing to carry out proper or any creditworthiness checks.

Background to the complaint

Mr D and his wife purchased membership of a timeshare (the 'Fractional Club') from a timeshare provider (the 'Supplier') – purchasing the following number of fractional points on the dates below:

- 2,750 fractional points on 15 September 2013 for £39,311, but after trading in their existing points they paid £11,800 ('Purchase Agreement 1');
- 2,960 fractional points on 24 September 2014 for £36,289, but after trading in the first lot of 2,750 fractional points, they paid £6,039 ('Purchase Agreement 2');

(which, when appropriate, I'll simply refer to as the 'Purchase Agreements').

As this complaint is only concerned with those purchases, the above dates are the 'Times of Sale' for the purposes of my decision.

Fractional Club membership was asset backed – which meant it gave Mr and Mrs D more than just holiday rights. It also included a share in the net sale proceeds of a property named on the relevant purchase agreement (which I'll refer to as the 'Allocated Properties') after their membership term ends.

Mr D paid for their fractional points by taking the following amounts of finance from the Lender at the respective Times of Sale:

- £11,800 in 2013 ('Credit Agreement 1');
- £6,039 in 2014 ('Credit Agreement 2');

(which, when appropriate, I'll simply refer to as the 'Credit Agreements').

These loans were both settled early, on 28 April 2014 and 13 November 2014 respectively.

Mr D – using a professional representative (the 'PR') – wrote to the Lender on 9 May 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 D's concerns as a complaint and issued its final response letter on 22 June 2022, rejecting it on the ground that it was time-barred under the Limitation Act 1980. The complaint was then referred to the Financial Ombudsman Service. It was

assessed by an Investigator who, having considered the information on file, agreed that Mr D's claims were time-barred under that Act.

Mr D disagreed with the Investigator's assessment and asked for an ombudsman's decision – which is why it was passed to me. I wrote a provisional decision which read as follows.

I issued my provisional findings to the parties on 17 September 2025. In my provisional decision, I said the following:

> **My provisional findings**
>
> I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. And having done that, I do not currently think this complaint should be upheld. I will explain why.
>
> **Time limits**
>
> I will begin with my jurisdiction to consider this complaint.
>
> Our jurisdiction is set out in rules made by the Financial Conduct Authority (FCA). 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.
>
> Mr D complained to the Lender in May 2022, eight and nine years after the Times of Sale. If he believed that the Lender had not asked him about his income and expenditure or had not taken steps to ensure that he could afford the loans, then he was aware of that at the time, so the three-year rule does not assist him. I have not been told about any exceptional circumstances which caused the delay in complaining. So I think that his complaint about irresponsible lending has been brought too late under the FCA's rules, and that I therefore cannot consider it.
>
> 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 loans were settled in 2014, so Mr D needed to complain by November 2020 at the latest. So – with the possible exception of the PR's complaint about undisclosed commission having been paid by the Supplier to the Lender, which I will refer to later – I'm satisfied that I cannot consider the complaint about an unfair credit relationship existing between Mr D and the Lender.
>
> In its response to the Investigator's opinion, the PR appeared to say that the Limitation Act does not apply to a claim under section 140A. But it most certainly does, as was confirmed by the Supreme Court's judgment in *Smith and another v Royal Bank of Scotland* [2023] UKSC 34. As Lord Leggatt said at paragraph 2, "The period of limitation begins to run only when the relationship ends and expires after six years."
>
> 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 Agreements were entered into or from the alleged misrepresentations, but from when the Lender rejected Mr D's

claim under that section, which it did in 2022. So I certainly have jurisdiction to consider his complaint about that.

For a claim under section 75 about misrepresentation, time under the Limitation Act runs from the Time of Sale, so I agree with the Lender that the section 75 claim brought in 2022 was brought out of time, and that this is a complete defence to that claim.

For a claim under section 75 about breach of contract, time under the Limitation Act runs from the date of the alleged breach. Some of the breaches alleged by Mr D may have been in time (i.e. less than six years before he complained), and so I will consider them next.

The cash price limit

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 or breach of contract by the supplier.

However, certain conditions must be met if the protection afforded to consumers is engaged. One of these is that the cash price of the purchase must not exceed £30,000. Since the cash prices of the Purchase Agreements were £39,311 and £36,289, section 75 does not apply to those purchases, and so I cannot say that the Lender was wrong to deny Mr D's claims under that section.

Section 75A

I have considered whether the Lender should have upheld Mr D's claim under section 75A of the CCA instead, as that section covers larger purchases.

Mr D says that he could not holiday where and when he wanted to. That was framed, in the Letter of Complaint, as part of his complaint about the fairness or otherwise of his credit relationships with the Lender under section 140A of the CCA. However, on my reading of the complaint, this suggests that the Supplier was not living up to its end of the bargain, potentially breaching the Purchase Agreements.

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 D states that the availability of holidays was/is subject to demand. 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 Agreements.

So, from the evidence I have seen, I do not think the Lender is liable to pay Mr D 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.

[…]

Conclusion

In conclusion, as things currently stand, I do not think that the Lender acted unfairly or unreasonably when it dealt with the relevant section 75 claims, and if I put the issue of commission to one side for the time being, I am not persuaded that the Lender was party to credit relationships with Mr D under the Credit Agreements that were unfair to him for the purposes of section 140A of the CCA – nor do I see any other reason why it would be fair or reasonable to direct the Lender to compensate him.

My addendum provisional decision

At the time of my provisional decision I deferred my conclusions on the matter of commission disclosure in order to review that issue further. I've since written to the parties setting out my thoughts on why I think this aspect of the complaint is out of jurisdiction too. In summary, I said that I could not consider it in the context of section 140A, for the same reasons as I had given earlier. And I also said that I could not uphold a complaint about undisclosed commission in the context of a separate, free-standing complaint about a potential breach of fiduciary duty.

Responses to my provisional findings

The Lender didn't respond to my provisional decision. The PR didn't accept the proposed outcome. It made further submissions in support of Mr D's position. Having received and reviewed these, I'm now proceeding with my final decision.

In doing so, I'm conscious that the PR has made a series of assertions surrounding the provision of information relating to commission arrangements. These include, among other things, expressing doubt that the Lender has provided key information, requesting that the information we have received be shared with it in full, and asking that we do not proceed with a decision before this is done and it has had an opportunity to make further submissions.

The PR's requests have been addressed by us under separate correspondence. For reasons I will explain in the course of this decision, I've concluded that it's appropriate for me to proceed with my determination.

The legal and regulatory context

The legal and regulatory context that I think is relevant to this complaint has been shared in several hundred published decisions on very similar complaints, as well as in previous correspondence with the parties. So there's no need for me to set this out again in detail here. I simply remind the parties that our rules[1] say that in considering what is fair and reasonable in all the circumstances of the complaint, I will 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.

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.

[1] Financial Conduct Authority ("FCA") Handbook – DISP 3.6.4R ("R" denotes a rule).

After considering the case afresh and having regard for what's been said in response to my provisional decision and in my subsequent correspondence, I find it offers no persuasive reason to depart from the conclusions I've previously set out. I'll explain why.

Time limits

The PR argued that this complaint was not out of time under either the Limitation Act or the FCA's rules. In connection with section 140A of the CCA, it appeared to argue that the Limitation Act does not even apply. But it most certainly does, as set out very clearly in the Supreme Court's judgment in *Smith and another v Royal Bank of Scotland,* which I quoted in my provisional decision, so the PR's argument is entirely misconceived. But I will consider the arguments the PR made about how the Limitation Act applies to a claim under section 75 of the CCA as also being relevant to a claim under section 140A.

The PR made essentially the same argument in relation to both the Limitation Act and the FCA's rules: that Mr D had been unaware that he had cause to complain until long after the Times of Sale, and within three years of the Letter of Complaint. I have already described the FCA's three year time limit, which runs from when a complainant knew or should have known that he had cause to complain. And section 32 of the Limitation Act provides for a limitation period to begin later than it otherwise would if relevant facts have been concealed or there has been fraud; instead it runs from when the concealed fact or fraud was (or should have been) discovered.

The PR also argued that Mr D being unaware of key facts amounted to exceptional circumstances under the FCA's rules. But I don't think that can be how the FCA intended that rule to operate, because that scenario is already provided for by the three year rule.

I accept that Mr D was unaware of the undisclosed commission issue at the Times of Sale, and no doubt for some time afterwards. But he certainly did know that he had cause to complain about other issues. For example, one of the reasons he alleges he has been treated unfairly is because of the Supplier's high pressure sales tactics, and he must have known about that at the time. And one of the alleged misrepresentations was that the Supplier's holiday resorts were exclusive to members of the Fractional Club, but that Mr D soon discovered that non-members could also book holidays at the resorts and more cheaply. He knew about that within six years of the Time of Sale.

I don't accept that every time a new issue to complain about is discovered it starts a new statutory limitation period, or starts a new three-year period under the FCA's rules. I think that once a person knows they have cause to complain about something, or cause to bring a claim under section 75 or 140A of the CCA, and chooses not to complain, they can't subsequently complain about another issue arising out of the sale more than six years after the Time of Sale and claim that they could not have complained earlier. So I remain of the view that Mr D has left it too late to complain about an unfair credit relationship, misrepresentation, or irresponsible lending.

(For reasons I explained in my original decision, I think that breaches of contract are an exception. Each breach is a new cause of action. So I have not changed my mind that I can consider those allegations on their merits.)

Merits

The PR originally raised various points of complaint, such as those giving rise to Mr D's section 75 claim, which I addressed in my provisional decision. In its response, it hasn't made any further comments in relation to most of its original points, or said anything that leads me to think it disagrees with my provisional conclusions in relation to the breach of

contract allegations. Instead, it focused mainly on the issue of whether the credit relationship between Mr D and the Lender was unfair *per* section 140A of the CCA (and the related jurisdictional issues).

I've seen no reason for me to change my mind about the only issue in this case that I have been able to consider on its merits; namely, the alleged breaches of contract. I remain of the view that the Lender did not have to uphold Mr D's claim under section 75 or section 75A.

Commission: An alternative ground of complaint

In my previous correspondence I mentioned that one of the grounds for complaint about the fairness or otherwise of the credit relationship – namely, undisclosed commission – could also potentially constitute a separate and freestanding complaint, independently of section 140A. (I didn't think I needed to decide whether I had jurisdiction to consider it.) I'll reiterate my findings here.

The alternative ground 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 D (that is, secretly).

But for the reasons I set out previously, and having regard to last year's Supreme Court judgement on the subject,[2] I'm not persuaded that the Supplier – when acting as a credit broker – owed Mr D 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.

Conclusion

After careful reconsideration of the facts and circumstances of this complaint, I adopt my provisional conclusions as part of my final decision. For the reasons I've given above and in my earlier correspondence I've mentioned, I don't think the Lender acted unfairly or unreasonably when it dealt with Mr D's section 75 claims. And I'm not persuaded that the Lender was party to a credit relationship with Mr D that was unfair to him for the purposes of section 140A of the CCA. Having taken everything into account, I see no other reason why it would be fair or reasonable for me to direct the Lender to compensate Mr D.

My final decision

For the reasons set out above, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 12 March 2026.
Richard Wood
Ombudsman

[2] The judgment handed down on 1 August 2025 in *Johnson v FirstRand Bank Ltd, Wrench v FirstRand Bank Ltd and Hopcraft v Close Brothers Ltd* [2025] UKSC 33.