

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 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 without first carrying out proper or any creditworthiness checks.

Background to the complaint

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

- trial membership on 26 June 2011 ('Purchase Agreement 1');
- 1,346 fractional points on 2 September 2012 for £18,949 – having traded in the trial membership ('Purchase Agreement 2');

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

I will refer to those dates as the 'Times of Sale' for the purposes of my decision.

Fractional Club membership was asset backed – which meant it gave Mr and Mrs L 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 Property') after their membership term ends.

Mr L paid for their purchases by taking two loans from the Lender in his sole name. He is therefore the only eligible complainant under our rules. The first loan ('Credit Agreement 1') was settled on 12 December 2011, and the second loan ('Credit Agreement 2') was settled on 19 April 2013. (When appropriate, I'll simply refer to them as the 'Credit Agreements'.)

Mr L – using a professional representative (the 'PR') – wrote to the Lender on 17 September 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 L's concerns as a complaint and issued its final response letter on 13 December 2021, rejecting it on every ground. In particular, it said that Mr L's section 75 claim was time-barred under the Limitation Act 1980.

The complaint was immediately referred to the Financial Ombudsman Service. It was assessed by an Investigator who, having considered the information on file, said that part of Mr L's complaint was out of our service's jurisdiction, because it had been brought too late under our time limits. He agreed with the Lender that the section 75 claim had been brought too late, and he rejected the rest of the complaint on its merits.

Mr L 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.

What I've provisionally 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.

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. 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 L complained to the Lender in September 2021, nine and ten 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 2011 and 2013, so Mr L needed to complain about the trial membership by 2017 and about the Fractional Club by 2019. 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 L and the Lender.

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 L's claim under that section, which it did on 13 December 2021. 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 2021 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 L may have been in time (i.e. less than six years before he complained), and so I will consider them next.

Section 75 of the CCA: the Supplier's breach of contract

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 breach of contract by the supplier.

Mr L 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 L 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 over the years. 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 L 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.

[...]

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 why I thought that issue was also out of jurisdiction as it could only be considered in the context of a section 140A claim, and Mr L's claim had been brought out of time.

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 L'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.

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 PR's submissions notwithstanding.

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 rules¹ 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 reconsidered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

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.

The PR's response to my provisional decision relates mainly to the issue of whether Mr L's complaint was brought out of time. It referred to the exceptional circumstances rule in the FCA's jurisdiction rules, and also to case law about section 32 of the Limitation Act (which is relevant by way of analogy), both of which are about when important facts have been concealed from a complainant so as to prevent him from complaining sooner. The PR relied on the fact that commission had not been disclosed to Mr L at the Time of Sale or until several years later. The PR also argued that to entirely exclude commission from consideration had the effect of undermining the consumer protection purpose of section 140A.

Jurisdiction

The PR argued that withholding from Mr L information about commission amounts to an exceptional circumstance which resulted in a delay in bringing his complaint. However, I don't think this interpretation of the exceptional circumstances rule adds anything new to the three-year rule, under which time only begins to run once a complaint has discovered (or ought to have discovered) that he had cause to complain. As I said in my provisional decision, Mr L already knew about a number of other causes for complaint at the Time of Sale. The subsequent discovery of a further ground to complain, many years later, does not enable a complainant to bring a late complaint about a loan which he had the opportunity to complain about earlier. So I remain of the view that I cannot consider Mr L's complaint about an unfair credit relationship – including about undisclosed commission (as well as the other potential grounds of unfairness) – as it has been brought too late.

Section 140A does not override the FCA's time limits, and it is not within my remit to decide that it would be fair and reasonable if it did. I am bound by the FCA's rules. And when Parliament enacted section 140A, it knew that any action or complaint brought under that section would be subject to time limits such as FCA rules or the Limitation Act, but it did not introduce an exemption for it.

For the same reasons, I also think I cannot consider a complaint about commission brought under some other ground, such as a breach of fiduciary duty or a breach of OFT guidelines, for example.

Conclusion

After careful reconsideration of the facts and circumstances of this complaint, I adopt my

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

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 L's section 75 claims. And I remain of the view that I cannot consider the complaint that the Lender was party to a credit relationship with Mr L that was unfair to him for the purposes of section 140A of the CCA, or the complaint about irresponsible lending. 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 L.

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 L to accept or reject my decision before 12 February 2026.

Richard Wood
Ombudsman