

## **The complaint**

Mr B's complaint is, in essence, that Mitsubishi HC Capital UK Plc (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 carry out proper or any creditworthiness checks.

## **Background to the complaint**

Mr B and his wife purchased membership of a timeshare (the 'Fractional Club') from a timeshare provider (the 'Supplier') on 14 February 2012 (the 'Time of Sale'). They entered into an agreement with the Supplier to buy 747 fractional points at a cost of £14,944 (the 'Purchase Agreement'). But after trading in their trial membership, they ended up paying £10,949 for it.

Fractional Club membership was asset backed – which meant it gave Mr B and his wife 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 B paid for their Fractional Club membership by taking finance of £13,280 from the Lender (the 'Credit Agreement') in his sole name. This consolidated an earlier loan he had taken to finance his purchase of trial membership in 2011. The new loan was settled in June 2012.

Later on, Mr B and his wife divorced, and their joint membership of the Fractional Club was transferred into his sole name.

On 20 December 2017, Mr B wrote to the Lender to complain that the Purchase Agreement had been mis-sold for various reasons. The Lender did not uphold his complaint. (It has not been suggested that he was sent a final response letter on that occasion.)

On 12 August 2021, Mr B – this time using a professional representative (the 'PR') – wrote to the Lender (the 'Letter of Complaint') to raise a number of different concerns, including some additional matters which had not been raised in 2017. 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 B's concerns as a complaint and issued its final response letter on 5 November 2021, rejecting it on every ground. It said that Mr B's claim under section 75 of the CCA was time-barred under the Limitation Act 1980. It rejected the rest of his concerns on their merits.

Meanwhile the complaint had been referred to the Financial Ombudsman Service. It was later assessed by an Investigator who, having considered the information on file, agreed that the issues which had been raised for the first time in 2021 as part of the section 75 claim were time-barred under the Limitation Act. He rejected the other complaint points on their merits.

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

I issued my provisional findings to the parties on 15 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.

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**

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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.

In his 2017 complaint letter, Mr B didn't complain that no creditworthiness checks had been carried out prior to him entering into the Credit Agreement. That issue was first raised in 2021, more than six years after the Time of Sale. He knew or ought to have known about that at the Time of Sale, so the three-year rule does not assist him. I have not been told about any exceptional circumstances which caused the delay in complaining, and since he was able to complain about other matters in 2017, I doubt that anything prevented him from complaining about this. 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 loan was settled in June 2012. Mr B's 2017 complaint was brought within that time, but none of the points he made in that letter pertain to section 140A. The section 140A claim that was made in 2021 was made too late under the FCA's rules (and under the Limitation Act too). 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 B 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 Agreement was entered into or from the alleged misrepresentation, but from when the Lender rejected Mr B's claim

under that section, which it did on 5 November 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. However, Mr B is also entitled to complain about the outcome of his original section 75 claim in 2017, and he brought his complaint about that to our service in time under the FCA's rules. The 2017 claim was brought in good time under the Limitation Act too. So I will consider his complaint about how the Lender dealt with the misrepresentations alleged by him in his 2017 letter.

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 B are likely to be in time (that is, everything he alleged in his 2017 letter, and anything mentioned in the 2021 Letter of Complaint which happened less than six years earlier), and so I will consider them too.

### **Section 75 of the CCA: the Supplier's misrepresentations at the Time of Sale**

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. The Lender doesn't dispute that the relevant conditions are met. But for reasons I'll come on to below, it isn't necessary to make any formal findings on them here.

It was said in the Letter of Complaint that Fractional Club membership had been misrepresented by the Supplier at the Time of Sale because Mr B was told by the Supplier:

- (1) that Fractional Club membership had a guaranteed end date when that was not true;
- (2) that he could sell his Fractional Club membership at any time in the future, when that was not true;
- (3) that the Supplier's resorts were exclusive to Club members when that was not true.

In connection with point 1, Mr B alleged that his membership is in perpetuity, and that after his death his dependents would take over liability for outstanding fees. He also said that the Allocated Property can only be sold if all members unanimously agreed to the sale, which he doubted would ever happen.

These concerns were misconceived. Firstly, membership was not in perpetuity, but was limited to nineteen years. The proposed sale date was 31 December 2030. And while under Rules 9.1 and 9.2.9 of the relevant Fractional Club Rules the sale of the Allocated Property could be postponed for up to two years by the 'Vendor',<sup>1</sup> or for

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<sup>1</sup> Defined in the FPOC Rules as "CLC Resort Developments Limited".

longer than that if there were problems selling and the 'Owners'<sup>2</sup> agreed, or for an otherwise specified period provided there was unanimous agreement in writing from the Owners, that does not render the representation above untrue. So, I am not persuaded that the representation above constituted a false statement of fact.

And it certainly was not the case that Mr B's children would inherit his liability for fees. The Purchase Agreement is a personal contract, which will expire on his death (if it is still subsisting at that time).<sup>3</sup> Any debts already incurred before his death would be owed by his estate, not by his children in their own right. Such debts cannot be inherited by his children, nor can his children be compelled to become members or owners.

On point 2, I think that when the Supplier told Mr B he could sell his membership at any time, it was only explaining that he had the right to sell it if he wanted to (as an alternative to simply surrendering it), rather than making a representation about the level of demand in the marketplace. (I also note that in the Member's Declaration, paragraph 6 says "We understand that ... CLC makes no representation as to the future price or value of the fraction.")

Finally, I've seen evidence that the Supplier's holiday resorts were not exclusive to its members. But I've not seen evidence Mr B was told that they were exclusive and not open to the public. The Supplier says that its resorts are not exclusive to members, although club members do receive benefits which are exclusive to members. I'm open to receiving more evidence on this matter, but for the moment I am not persuaded that the evidence I have now is enough to find that the resorts were misrepresented as only being available to be booked by members.

So, while I recognise that Mr B has concerns about the way in which Fractional Club membership was sold by the Supplier, when looking at the claim under section 75 of the CCA, I can only consider whether there was a factual and material misrepresentation by the Supplier. For the reasons I've set out above, I'm not persuaded that there was. And that means that I don't think that the Lender acted unreasonably or unfairly when it dealt with this particular section 75 claim.

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

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I have already summarised how section 75 of the CCA works and why it gives consumers a right of recourse against a lender. So, it is not necessary to repeat that here other than to say that, if I find that the Supplier is liable for having breached the Purchase Agreement, the Lender is also liable.

Mr B 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 relationship 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 Agreement.

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 B states that the availability of holidays

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<sup>2</sup> Defined in the FPOC Rules as "a purchaser who has entered into a Purchase Agreement and has been issued with a Fractional Rights Certificate (which shall include the Vendor for such period of time until the maximum number of Fractional Rights have been acquired)."

<sup>3</sup> See *Chitty on Contracts* (35th edition), paragraph 29-030; and see also paragraph 24-009.

was/is subject to demand. It also looks like he made use of his fractional points to holiday on a number of occasions. 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 Agreement.

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

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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 claim, and if I put the issue of commission to one side for the time being, I am not persuaded that the complaint about the Lender being party to a credit relationship with Mr B under the Credit Agreement that was unfair to him for the purposes of section 140A of the CCA is in my jurisdiction. 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 thought that issue was out of jurisdiction too. In summary, I said that I could not consider it under section 140A, for the reasons previously set out. I also said that I could not uphold a separate, free-standing complaint by considering undisclosed commission as 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 B'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, affordability assessments, and other issues. 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<sup>4</sup> 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.

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 originally raised various points of complaint, such as those giving rise to Mr B'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 those points. So I'll focus here on the points the PR *has* made in response.

The PR's response to my provisional decision relates entirely to the merits of the complaint. It has focused mainly to the issue of whether the credit relationship between Mr B and the Lender was unfair *per* section 140A of the CCA. And it also repeated its allegation about irresponsible lending.

However, the PR has not addressed my findings about jurisdiction. So there is no reason for me to depart from my earlier conclusions, and I confirm them here. The section 140A complaint and the irresponsible lending complaint were both raised too late for me to consider them, for the reasons previously explained.

Finally, on the subject of Mr B's section 75 claim, I remain of the same view as I expressed before and for the same reasons.

### **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 B's section 75 claim. And I'm not persuaded that I have jurisdiction to consider the complaint that the Lender was party to a credit relationship with Mr B that was unfair to him for the purposes of section 140A of the CCA, or that it lent to him irresponsibly. 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 B.

### **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 B to accept or reject my decision before 11 March 2026. But this decision brings to an end our service's handling of this complaint.

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<sup>4</sup> Financial Conduct Authority ("FCA") Handbook – DISP 3.6.4R ("R" denotes a rule).

Richard Wood  
**Ombudsman**