

The complaint

The estate of Mr R complains that Mitsubishi HC Capital UK Plc trading as Novuna Personal Finance¹ ('Novuna') is liable to pay it 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 R, but Mr R sadly died in 2016. As the loan used to pay for the purchase was in the late Mr R's sole name, the complaint is brought on behalf of his estate, which is the only eligible complainant here. I will, however, refer to both Mr and Mrs R where it is appropriate to do so.

What happened

The late Mr R and Mrs R were members of a timeshare with a timeshare provider (the 'Supplier') having purchased a number of products over time. But the product at the centre of this complaint is Mr and Mrs R's purchase of membership of a timeshare (the 'Fractional Club') from the Supplier on 28 September 2011 (the 'Time of Sale'). They entered into an agreement with the Supplier to buy 3,304 fractional points at a cost of £45,422.26 (the 'Purchase Agreement'). But after the trade-in value given to their existing membership, they ended up paying £13,846 for their Fractional Club membership.

The late Mr R paid for their Fractional Club membership by taking finance from Novuna for £13,846 in his sole name (the 'Credit Agreement'). The outstanding balance of this loan was cleared by the late Mr R on 14 May 2012.

On 1 February 2023, using a professional representative (the 'PR'), the estate of Mr R wrote to Novuna (the 'Letter of Complaint') to complain about:

1. Misrepresentations by the Supplier at the Time of Sale giving it a claim against Novuna under Section 75 of the CCA.
2. A breach of contract by the Supplier giving it 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 the estate of Mr R's concerns as a complaint, and sent its final response on 15 May 2023, rejecting it on all grounds.

¹ At the time the lender was trading as 'Hitachi Capital Consumer Finance'.

Unhappy with this response, the estate of Mr R asked the Financial Ombudsman Service to consider its complaint. It was assessed by an Investigator who 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.

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

The provisional decision

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

Having been sent the PD, neither side had anything further to add in response, so the complaint has come back to me to consider further.

As decisions relating to this Service's jurisdiction are not usually published, I have dealt with whether this Service is able to deal with the estate of Mr R's complaint that Novuna was party to an unfair credit relationship under Section 140A of the CCA in a separate decision.

This decision relates only to the estates of Mr R's complaints regarding Novuna's handling of its claims under Section 75 of the CCA, and that Novuna paid commission to the Supplier which was not disclosed to the late Mr R.

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.

And having done so, and because neither side made any representations following my PD, I see no reason to change what I said. I do not think this complaint ought to be upheld. For clarity, I will set out the reasons for my decision below.

The estate of Mr R's claims under Section 75 of the CCA

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. It seems that the purchase price of the Fractional Club, being £45,422.26 exceeds the maximum price that is allowed for a claim of misrepresentation under Section 75 of the CCA – that maximum limit is £30,000. So, I am satisfied that a claim under Section 75 for misrepresentation cannot succeed.

But Section 75A of the CCA allows for a claim should the price of the purchase be over £30,000, but only in relation to a breach of contract by the Supplier.

The estate of Mr R says that he and Mrs R 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. So, I'm satisfied the claim includes an element which is an alleged breach of contract, so this could potentially be considered under Section 75A. There are other criteria in order for Section 75A to apply, but I don't consider that I need to make a finding on that because, as I go on to explain below, whether it be under Section 75 or 75A, I do not think that the Lender was unfair or unreasonable when it did not accept the estate of Mr R's claim.

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 the late Mr R and Mrs R states that the availability of holidays was/is subject to demand. So, whilst I accept that they may not have been able to take certain holidays, I have not seen enough to persuade me that the Supplier has breached the terms of the Purchase Agreement.

The PR also says on the estate of Mr R's behalf that the Supplier breached the Purchase Agreement because it went into liquidation. And if certain parts of the Supplier's business were put into administration, I can understand why the PR is alleging that there was a

breach of the Purchase Agreement as a result. However, neither the estate of Mr R nor the PR have said, suggested or provided evidence to demonstrate that due to the liquidation Mrs R is no longer:

1. A member of the Fractional Club;
2. able to use her Fractional Club membership to holiday in the same way she could initially; and
3. entitled to a share in the net sales proceeds of the Allocated Property when the Fractional Club membership ends.

So, from the evidence I have seen, I do not think Novuna is liable to pay the estate of Mr R any compensation for a breach of contract by the Supplier.

Section 75 - conclusion

So, in conclusion, I do not think that the Lender acted unfairly or unreasonably when it did not accept the relevant Section 75 claims, so it does not need to do anything further in this regard.

The estate of Mr R's Commission Complaint

Two of the grounds of complaint relating to the commission arrangements between Novuna and the Supplier constitute separate and freestanding complaints.

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 the late Mr R (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 the estate of Mr R.

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 the late Mr R entered into wasn't high. At £1,419.22, it was only 10% of the amount borrowed and even less than that (6%) 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

² The Office of Fair Trading guidance

persuaded that the late Mr R either wouldn't have understood that or would have otherwise questioned the size of the payment at that time. After all, the late Mr R and Mrs R 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 the late Mr R 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, 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 wasn't acting as an agent of the late Mr R 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 the late Mr R 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 his estate. 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 the late Mr R would still have taken out the loan to fund their purchase at the Time of Sale had there been more adequate disclosure of the commission arrangements that applied at that time.

Conclusion

In conclusion, I do not think that Novuna was unfair or unreasonable when it did not accept the estate of Mr R's claims under Section 75 of the CCA, and I do not uphold its complaint relating to undisclosed commission payments.

My final decision

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Mr R to accept or reject my decision before 30 December 2025.

Chris Riggs
Ombudsman