

The complaint

Mrs M'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, (3) providing a loan through an unauthorised credit broker, (4) providing a loan to pay for an Unregulated Collective Investment Scheme ('UCIS') and (5) overcharging interest on a loan.

What happened

Mr and Mrs M were members of a timeshare provider (the 'Supplier') – having purchased several products from it over time. But the product at the centre of this complaint is their membership of a timeshare that I'll call the 'Fractional Club' – which they bought on 19 August 2012 (the 'Time of Sale'). They entered into an agreement with the Supplier to buy 2,898 fractional points at a cost of £10,363 (the 'Purchase Agreement'), after trading in their existing timeshare membership.

Fractional Club membership was asset backed – which meant it gave Mrs M 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 and Mrs M paid for their Fractional Club membership by taking finance of £10,363 from the Lender (the 'Credit Agreement') in Mrs M's name only. As such, only she is eligible to complain to about the Credit Agreement.

Mrs M – using a professional representative (the 'PR') – wrote to the Lender on 16 January 2024 (the 'Letter of Complaint') to raise several different concerns. Since then, the PR has raised some further matters it says are relevant to this outcome of the complaint. As both sides are familiar with the concerns raised, it isn't necessary to repeat them in detail here beyond the summary above.

The Lender dealt with Mrs M's concerns as a complaint and issued its final response letter on 24 May 2024, rejecting it on every ground.

The complaint was then referred to the Financial Ombudsman Service. I issued a provisional decision which concluded that:

1. Mrs M's complaints about a credit relationship with the Lender that was unfair to her and about irresponsible lending are not within our jurisdiction because it wasn't made within the time limits set out in DISP¹ 2.8.2 R (2).
2. The rest of Mrs M's complaint – about the Lender's decision to reject her concerns about the Supplier's alleged misrepresentations and breaches of contract under Section 75 of the CCA, the credit being provided by an unauthorised broker, interest overcharging and

¹ The Dispute Resolution ('DISP') Rules of the Financial Conduct Authority Handbook, which set out among other things the jurisdiction of the Financial Ombudsman Service.

providing a loan to pay for a UCIS – were made in time under DISP 2.8.2 R (2). But for the reasons I give below, I don't think these aspects of the complaint should succeed.

The Lender did not respond to my provisional decision.

The PR responded to say it disagreed. It provided some additional comments about why it felt the unfair relationship complaint was not made too late and about why that complaint should be upheld, that the interest overcharging complaint should be considered as a breach of regulations (not just as part of the unfair relationship complaint), as well as some comments about the complaint about the Lender rejecting Mrs M's Section 75 claims.

I issued a jurisdiction decision, in line with my provisional decision, confirming that I can only consider the merits of the complaints about the Lender's decision to reject her concerns about the Supplier's alleged misrepresentations and breaches of contract under Section 75 of the CCA, the credit being provided by an unauthorised broker, interest overcharging and providing a loan to pay for a UCIS. This final decision deals with the merits of those complaints, which I do not uphold – for the reasons given in my provisional 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 no different to that shared in several hundred ombudsman decisions on very similar complaints. And with that being the case, it is not necessary to set it out 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.

For the reasons given in my provisional decision, which are repeated below, I've decided not to uphold this complaint. 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.

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

Generally, creditors can reasonably reject Section 75 claims that they are first informed about after the claim has become time-barred under the Limitation Act 1980 as it wouldn't be fair to expect creditors to investigate such claims so long after the liability arose and after a limitation defence would be available in court. So, it is relevant to consider whether Mrs M's Section 75 claim for misrepresentation was time-barred under the Limitation Act before he put it to the Lender.

As I mentioned above, a claim under Section 75 is a "like" claim against the creditor. It essentially mirrors the claim Mrs M could make against the Supplier.

A claim for misrepresentation against the Supplier would ordinarily be made under Section 2(1) of the Misrepresentation Act 1967. And the limitation period to make such a claim expires six years from the date on which the cause of action accrued (see Section 2 of the Limitation Act).

But a claim, like the one in question here, under Section 75 is also 'an action to recover any sum by virtue of any enactment' under Section 9 of the Limitation Act. And the limitation period under that provision is also six years from the date on which the cause of action accrued.

The date on which the cause of action accrued was the Time of Sale. I say this because Mrs M entered the purchase of his timeshare at that time based on the alleged misrepresentations of the Supplier – which she says were relied upon. And as the loan from the Lender was used to help finance the purchase, it was when she entered into the Credit Agreement that she suffered a loss.

Mrs M first notified the Lender of his Section 75 claim on 16 January 2024. And as more than six years had passed between the Time of Sale and when that claim was first put to the Lender, I don't think it was unfair or unreasonable of the Lender to reject Mrs M's concerns about the Supplier's alleged misrepresentations.

In response to my provisional decision, the PR said, in summary, that:

1. I had not properly applied the principles of the Limitation Act 1980, since Section 32 (1) (b) provides more time to make the claim where the Supplier has concealed the misrepresentation.
2. Rule CONC 7.3.4R in the Financial Conduct Authority Handbook means that the Lender has a duty to treat customers fairly and consider evidence of fraud or misrepresentation – and so the Lender should've investigated the claim rather than rejecting it.

3. I had failed to apply “[*Financial Ombudsman Service*] technical guidance on linked lender liability, which requires that lenders make reasonable enquiries rather than summarily dismissing such claims.”

These points do not persuade me to depart from my findings set out above.

The PR says that the Supplier concealed that “the timeshare’s alleged “asset-backed” nature was false”. But, as mentioned above, Mrs M’s Fractional Club membership was asset-backed in that it was linked to the Allocated Property. That seems to have been made clear at the Time of Sale – both during the presentation Mrs M is likely to have been given, and in the documents provided to her at the time. So, I do not think this was “false”, as the PR alleges, nor was it concealed such that Mrs M had more time to make the claim under Section 32 of the Limitation Act.

As for the PR’s second point, CONC 7.3.4R says:

“A firm must treat customers in or approaching arrears or in default with forbearance and due consideration.”

I cannot see that this means what the PR says, nor that it is relevant to Mrs M’s Section 75 claim. While there is a duty to treat customers fairly, I do not think it was unfair for the Lender to reject Mrs M’s Section 75 claim.

As for the PR’s third point, it has not specified what technical guidance it is referring to. In any case, I am satisfied that I have followed our usual approach to considering complaints about a creditor’s response to a Section 75 claim. And I do not think it was unfair or unreasonable of the Lender to reject Mrs M’s concerns about the Supplier’s alleged misrepresentations.

Section 75 of the CCA: the Supplier’s Breach of Contract

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.

As part of Mrs M’s complaint, the PR says that she could not holiday where and when she wanted to. On my reading of the complaint, this suggests that the Supplier was not living up to its end of the bargain, meaning it could be viewed as potentially breaching the Purchase Agreement. It is not clear precisely when this was alleged to have happened, but if it happened within six years of the time the complaint was first made, such a claim would not have been made too late under the Limitation Act.

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 Mrs M states that the availability of holidays was/is subject to demand. It also looks like she made use of their fractional points to holiday on several occasions. I accept that she may not have been able to take certain holidays. But I have not seen enough to persuade me that the Supplier breached the terms of the Purchase Agreement.

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

Complaint about the Credit Agreement being arranged by an unauthorised broker

The PR says that the Credit Agreement was arranged by an unauthorised credit broker, the upshot of which is to suggest that the Lender wasn't permitted to enforce the Credit Agreement.

However, it looks to me like Mrs M knew, amongst other things, how much she was borrowing and repaying each month, who she was borrowing from and that she was borrowing money to pay for Fractional Club membership. And as the lending doesn't look like it was unaffordable for Mrs M, even if the Credit Agreement was arranged by a broker that didn't have the necessary permission to do so (which I make no formal finding on), I can't see why that led to Mrs M experiencing a financial loss. And with that being the case, I'm not persuaded that it would be fair or reasonable to tell the Lender to compensate them, even if the loan wasn't arranged properly.

Complaint that the Lender overcharged interest on the Credit Agreement

It has been submitted by the PR that the Lender did not properly calculate the interest due to be paid by Mrs M, meaning they have been overcharged.

I am aware that the PR has raised this as a blanket point of complaint for every loan advanced by the Lender and other ombudsmen have issued detailed decisions rejecting the arguments that the PR say apply to all its complaints.

I think that the Lender has worked out the interest in the way it said it would in the Credit Agreement, not least because it gave figures to Mrs M in that agreement setting out the total interest payable if the loan ran to term as well as the monthly repayment. But even the Lender wasn't as clear as it ought to have been about the interest charged or that it gave incorrect information on the interest rate that applied (or if it breached the relevant regulations), I can't see Mrs M lost out as a result. She knew how much she was repaying each month and for how long, and there is no evidence that she was unhappy with those figures.

So, even if the Lender presented information differently, I can't see how that would have made any difference to Mrs M's decision to take out the loan. It follows that I can't say Mrs M has lost out or that the Lender needs to do anything further because of this issue.

Complaint about providing a loan to pay for a UCIS

The PR says that Fractional Club membership was a Collective Investment Scheme as defined by FSMA.

However, the FSMA (Collective Investment Schemes) Order 2001/1062 included Schedule 001 Arrangements Not Amounting to a Collective Investment Scheme, Paragraph 13 of which states that arrangements do not amount to a Collective Investment Scheme "*if the rights or interests of the participants are rights under a timeshare contract or a long-term holiday product contract*".

Bearing in mind that Fractional Club membership was a timeshare contract, it does not appear that it can also have been a Collective Investment Scheme.

My final decision

For the reasons I've explained, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 1 January 2026.

Phillip Lai-Fang
Ombudsman