

The complaint

Ms 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 her under Section 140A of the Consumer Credit Act 1974 (as amended) (the 'CCA') and (2) deciding against paying a claim under Section 75 of the CCA.

What happened

Ms L purchased membership of a timeshare (the 'Fractional Club') from a timeshare provider (the 'Supplier') on 19 October 2011 (the 'Time of Sale'). Ms L, and a third-party I'll refer to Mr L, entered into an agreement with the Supplier to buy 2,988 fractional points at a cost of £10,765 (the 'Purchase Agreement').

Fractional Club membership was asset backed – which meant it gave Ms L more than just holiday rights. It also included a share in the net sale proceeds of a property named on her Purchase Agreement (the 'Allocated Property') after his membership term ends.

Ms L paid for her Fractional Club membership by taking finance of £10,765 from the Lender (the 'Credit Agreement') in her sole name.

Ms L – using a professional representative (the 'PR') – wrote to the Lender on 23 August 2022 (the 'Letter of Complaint') to raise a number of different concerns. Since then the PR has raised some further matters it says are relevant to the 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 issued its final response on the matter, which was unfavourable to Ms L, on 28 February 2024.

The complaint had, by that time, been referred to the Financial Ombudsman Service. It was assessed by two Investigators both of whom, having considered the information on file, rejected the complaint that the Lender ought to have accepted a claim made under Section 75 of the CCA on its merits. The Investigators felt the complaint that there was an unfair credit relationship under Section 140A, and that the lending was unaffordable for Ms L, hadn't been made in time as per the rules this service must follow and that it couldn't be considered.

Ms L disagreed with the Investigator's assessment and asked for an Ombudsman's decision – which is why it was passed to me.

Having reviewed the file afresh, I issued a provisional decision (PD) and gave the parties the opportunity to respond before I reconsidered the complaint. The PD included the following:

'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.

Having done so, I conclude that:

1. Ms L's complaint about a credit relationship with the Lender that was unfair to her is not within our jurisdiction because it wasn't made within the time limits set out in DISP 2.8.2 R (2).
2. The rest of Ms L's complaint – about unaffordable lending and the Lender's decision to reject her concerns about the Supplier's alleged misrepresentations under Section 75 of the CCA – was 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.

I'll explain my reasons for my conclusions below.

Section 2 of the Rules set out in DISP covers whether Ms L's complaint was made in time for the purposes of allowing the Financial Ombudsman Service to consider them.

This is what DISP 2.8.2 R says (insofar as it's relevant to this complaint):

“The Ombudsman cannot consider a complaint if the complainant refers it to the Financial Ombudsman Service:

[...]

(2) more than:

(a) six years after the event complained of; or (if later)

(b) three years from the date on which the complainant became aware (or ought reasonably to have become aware) that he had cause for complaint;

unless the complainant referred the complaint to the respondent or to the Ombudsman within that period and has a written acknowledgement or some other record of the complaint having been received;

[...]

unless:

[...]

(3) in the view of the Ombudsman, the failure to comply with the time limits in DISP 2.8.2 R [...] was as a result of exceptional circumstances; or [...]”

Part 1 – Six Years

One of the events complained about for the purposes of DISP 2.8.2 R (2)(a) is the allegation that the Lender was party to an unfair credit relationship with Ms L and, during the currency of that relationship, it perpetuated the unfairness, failing in its responsibilities to take the necessary steps to correct the situation. This includes the points more recently made by the PR that the Credit Agreement was unenforceable since, for example, the interest rate had been applied incorrectly and that an incorrect annual percentage rate (APR) calculation had resulted in Ms L overpaying the loan.

The Credit Agreement and, in turn, Ms L's credit relationship with the Lender ended on 7 May 2016. But the complaint about that credit relationship was first made to the Lender on 21 July 2023. So, it's clear that Ms L complained more than six years after the event complained about.

I've thought about the arguments brought by the PR as to why the complaint had been made within six years but I'm not persuaded by them. For example, while I recognise that the complaint was made before the end of the scheduled loan term, in reality Ms L owed the Lender nothing more once she'd paid the outstanding balance in full. This served to end the Credit Agreement and, as a result, the credit relationship.

With regard to the Lender's decision to lend to Ms L, the Investigators were of the view that she complained more than six years after the event complained of. I agree with that finding since the lending took place on 19 October 2011.

Section 75 creates a financial liability that the creditor is bound to pay. Liability under Section 75 isn't based on anything the lender does wrong, but upon the misrepresentations and breaches of contract by the supplier, for which Section 75 imposes on the lender a "like claim" to that which the borrower enjoys against the supplier. If the lender is notified of a valid Section 75 claim, it should pay its liability. And if it fails or refuses to do so, that failure or refusal can give rise to a complaint to the Financial Ombudsman Service.

So, when a complaint is referred to the Financial Ombudsman Service on the back of an unsuccessful attempt to advance a Section 75 claim, the act or omission that engages the Service's jurisdiction is the creditor's refusal to accept and pay the debtor's claim – rather than anything that occurs before the claim was put to the creditor, such as the supplier's alleged misrepresentation(s) and/or breach(es) of contract.

As a result, the six and three-year time limit (under DISP 2.8.2 (2) R) to complain about an unsuccessful attempt to initiate a Section 75 claim doesn't usually start until the respondent firm answers and refuses the claim.

In this case, as the Lender effectively refused to accept and pay Ms L's claim by September 2023 (when it failed to respond to Ms L's complaint within eight weeks of it being made), the primary time limit (of six years) only started at that time. And the complaint about the Lender's handling of that claim was referred to the Financial Ombudsman Service in time for the purpose of the rules on our jurisdiction.

Part 2 – Three Years

However, that isn't the end of the matter in relation to the aspects I find were complained about more than six years later. DISP 2.8.2 R (2)(b) could provide Ms L with more time to complain about the events in question if he did so within three years of the date he became aware, or ought reasonably to have become aware, that he had cause to complain.

This raises the question as to whether Ms L was aware, or ought reasonably to have been aware, more than three years before she first complained to the Lender that she had cause to complain to it.

So, that's what I've considered here.

To answer this question, I need to consider whether and when Ms L was aware or ought reasonably to have been aware that:

1. There was a problem with the lending or with the timeshare.
2. The problem(s) caused her a loss.
3. Another party's actions (or its failure to act) may have caused the loss.
4. The other party may have been the Lender.

Section 140A and the credit relationship

The Letter of Complaint and the PR's complaint referral letter to this service set out various reasons for why Ms L thinks her credit relationship with the Lender was unfair under the Credit Agreement, including:

1. Concerns about how the timeshare was sold.
2. Concerns about the lending at the Time of Sale.
3. The alleged difficulties Ms L had with the timeshare.
4. Allegedly unfair contract terms.

One of those difficulties was that Ms L felt coerced into buying the timeshare.

It seems likely to me that it wasn't long after the Time of Sale that Ms L knew that there were significant problems with the sale causing her financial losses because it is suggested she was pressured into buying the product.

So, when it looked like that was the case, Ms L knew or ought reasonably to have known at that time that something had gone wrong and that another party was responsible for the losses that she says followed. One of those parties was, quite obviously, the Supplier. But Ms L also knew that the Lender had financed the purchase of the timeshare and that the Supplier had brokered the finance.

Given the size of the financial commitment that Ms L found herself with because of the timeshare and the associated loan, and the long-term financial consequences of both of those commitments, I think it's reasonable to have expected her to carry out enquiries when the concerns about the loan and timeshare first arose in order to establish what her rights were.

What's more, Ms L's timeshare was a complicated contract that included (amongst other things) an interest in overseas property. As such, it was, by its very nature, fraught with complexities. And with that being the case, if Ms L wasn't already aware of the implications of her concerns and the possible complaints that she might make in light of them, the obvious course to take was to make further enquiries and seek advice. Such enquiries seem to me to have been a step she ought reasonably to have taken shortly after she acquired the timeshare when she began to have concerns about how it had been sold. And had Ms L carried out such enquiries, I think they would have led her to discover that the Lender, as the connected lender that financed the transaction, may well have borne responsibility for the problems Ms L says she had with her timeshare.

With that being the case, I think that Ms L ought reasonably to have been aware that she had cause to complain about the Lender holding her in an unfair credit relationship at least by the time the Credit Agreement had ended. So, I'm not persuaded that the three-year part of the relevant time limit extends the six-year part of it for the purpose of Ms L's complaint about an unfair credit relationship under Section 140A of the CCA. And that means she had to complain about the Lender's role in such a relationship by 7 May 2022. But as she didn't do that until 21 July 2023, this complaint was made late under the rules I have to apply.

Lending

The Letter of Complaint also set out that proper credit checks of Ms L weren't carried out to determine the affordability of the loan for her. The Investigators argued that this aspect was also brought out of time as per the rules that this service must follow.

However, I don't believe that any lack of checks should have triggered awareness in Ms L. I wouldn't have expected her to know about the duties on lenders to carry out appropriate checks or to have known that they were or were not carried out on this occasion. I don't think Ms L became aware or ought to have become aware until several years later, most likely when she instructed the PR in 2022.

With that being the case, I'm persuaded that the three-year part of the relevant time limit extends the six-year part of it for the purpose of Ms L's complaint about the lending. On the basis that she probably didn't become aware until around 2022, I think she complained in time under the rules I have to apply.

Exceptional Circumstances

I can consider the merits of a complaint referred to the Financial Ombudsman Service after the expiry of the relevant time limit if there are exceptional circumstances that justify why it was referred late. But, based on what I've seen and taking account of the PR's submissions on this point, I can't say that there are any other exceptional circumstances that apply to Ms L's complaint about an unfair credit relationship with the Lender.

I realise that this will be disappointing for Ms L. But I hope she understands why I can't disregard the rules that apply.

Ms L's Lending Complaint and its Merits

I haven't seen anything to persuade me that the right checks weren't carried out by the Lender given this complaint's circumstances. But even if I were to find that the Lender failed to do everything it should have when it agreed to lend (and I make no such finding), I would have to be satisfied that the money lent to Ms L was actually unaffordable before also concluding that she lost out as a result and then consider whether the credit relationship with the Lender was unfair to her for this reason.

I'm also mindful of the fact that, as noted above, the loan was in fact settled in full around 54 months into the 180-month term.

With all of that in mind, I am not satisfied from the available evidence that the lending was unaffordable for Ms L.

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

As a general rule, 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 (the 'LA') as it wouldn't be fair to expect creditors to look into 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 Ms L's Section 75 claim for misrepresentation was time-barred under the LA before they 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 Ms L 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 LA).

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 LA. 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 Ms L entered into the purchase of her 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.

Ms L first notified the Lender of her Section 75 claim on 21 July 2023. 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 Ms L’s concerns about the Supplier’s alleged misrepresentations.

The PR has argued that the limitation period can be extended in cases of concealment or fraud. There are provisions within the LA to extend limitation periods in such circumstances. However, I don’t think the PR’s arguments assist the claim because, for example, the PR’s allegation of concealment of the product being an investment is inconsistent with another of the PR’s allegations that the Supplier promoted the product to Ms L as an investment.’

The Lender did not respond to my PD.

The PR didn’t agree that the complaint about Section 140A had been brought outside of the time limits set out in DISP. In terms of the merits of the complaint, it also said that the Credit Agreement documentation was incorrect and unfit for purpose and that the complaint about the Lender’s response to Ms L’s Section 75 claim wasn’t time-barred by the LA as I’d provisionally held.

I recently revisited my provisional findings on jurisdiction and issued a decision finalising my thoughts on what I could and couldn’t consider as part of this complaint. I also revisited my provisional thoughts on the merits of the aspects of the complaint I could consider. I finalise those thoughts in this final 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, in many ways, no different to that shared in several hundred 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.

Following the responses from both parties, I've considered the case afresh and having done so, I've reached the same decision as that which I outlined in my provisional findings, for broadly the same reasons.

Again, my role as an Ombudsman isn't to address every single point which has been made to date, but to decide what is fair and reasonable in the circumstances of this complaint. If I haven't commented on, or referred to, something that either party has said, this doesn't mean I haven't considered it.

Rather, I've focused here on addressing what I consider to be the key issues in deciding this complaint and explaining the reasons for reaching my final decision.

Having done so, I conclude that the Lender didn't act unfairly or unreasonably in rejecting Ms L's concerns about the Supplier's alleged misrepresentations under Section 75 of the CCA, the affordability of the lending or the overcharging of interest on the loan.

I'll explain my reasons for my conclusions below.

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

Although the PR says I misapplied the LA in reaching my provisional conclusion on this point, I don't share that view. It refers to the limitation period being suspended where the misrepresentation has been concealed. As I said in my PD, I don't think this serves to extend the limitation period in the circumstances of this case.

Lending Complaint and its Merits

I still haven't seen anything to persuade me that the right checks weren't carried out by the Lender given this complaint's circumstances. But as I said in my PD, even if I were to find

that the Lender failed to do everything it should have when it agreed to lend (and I make no such finding), I would have to be satisfied that the money lent to Ms L was actually unaffordable before also concluding that she lost out as a result and then consider whether the credit relationship with the Lender was unfair to her for this reason.

As I pointed out in my PD, I'm also mindful of the fact that the loan was in fact settled in full around 54 months into the 180-month term.

With all of that in mind, I remain unpersuaded that the lending was unaffordable for Ms L.

Overcharging of Interest Complaint

The PR said that while my provisional decision addressed Ms L's complaint about the alleged overcharging of interest by the Lender in the context of rendering her credit relationship with it as unfair under Section 140A of the CCA, it did not address it as a standalone complaint point in relation to a breach of The Consumer Credit Sourcebook ('CONC') – found in the Financial Conduct Authority's (the 'FCA') Handbook of Rules and Guidance.

For the avoidance of doubt, and as I alluded to earlier, CONC is not relevant to this Credit Agreement, as the PR states, since the Credit Agreement was entered into before 1 April 2014. That said, OFT Guidance was in place and, taking that and everything else into account, 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 Ms L in that agreement setting out the total interest payable if the loan ran to term as well as the monthly repayment.

I can't see that Ms L lost out even if 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. 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 Ms L's decision to take out the loan. It follows, I can't say Ms L's lost out or that the Lender needs to do anything further because of this issue.

Overall Conclusion

In conclusion, given the facts and circumstances of this complaint, I do not think that the Lender acted unfairly or unreasonably when it dealt with Ms L's Section 75 claim or any other aspect of her complaint. And having taken everything into account, I see no other reason why it would be fair or reasonable to direct the Lender to compensate her.

My final decision

For the above reasons, my final decision is that I do not uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms L to accept or reject my decision before 20 January 2026.

Nimish Patel
Ombudsman