

The complaint

Mr R'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') and (2) deciding against paying claims under Section 75 of the CCA.

What happened

Mr R was the member of a timeshare provider (the 'Supplier') – having purchased a number of products from it over time. But the product at the centre of this complaint is his membership of a timeshare that I'll call the 'Fractional Club' – which he bought on 18 September 2013 (the 'Time of Sale'). He entered into an agreement with the Supplier to buy 3,240 fractional points at a cost of £5,451 (the 'Purchase Agreement').

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

Mr R paid for his Fractional Club membership by taking finance of £5,451 from the Lender (the 'Credit Agreement').

Mr R – using a professional representative (the 'PR') – wrote to the Lender on 2 November 2021 (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 Mr R, on 11 March 2022.

Mr R had, by that time, referred the complaint to the Financial Ombudsman Service. It was assessed by two Investigators, the first 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 Investigator felt the complaint that there was an unfair credit relationship under Section 140A, and that the lending was unaffordable for Mr R, hadn't been made in time as per the rules this service must follow and that it couldn't be considered.

Mr R 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. Mr R's complaint about a credit relationship with the Lender that was unfair to him 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 Mr R's complaint – about unaffordable lending and the Lender's decision to reject his concerns about the Supplier's alleged misrepresentations and breaches 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 Mr R'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 Mr R 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 Mr R overpaying the loan.

The Credit Agreement and, in turn, Mr R's credit relationship with the Lender ended on 24 April 2014. But the complaint about that credit relationship was first made to the Lender on 2 November 2021. So, it's clear that Mr R 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 Mr R owed the Lender nothing more once he'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 Mr R, the Investigator was of the view that he complained more than six years after the event complained of. I agree with that finding since the lending took place in September 2013.

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 eight-week period in which the Lender had to respond to the claim ended in January 2022, the primary time limit (of six years) only started at that time. And the complaint about the Lender's handling of those claims 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 Mr R 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 Mr R was aware, or ought reasonably to have been aware, more than three years before he first complained to the Lender that he 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 Mr R 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 him 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 set out various reasons for why Mr R thinks his credit relationship with the Lender was unfair under the Credit Agreement, including:

1. *Concerns about the lending at the Time of Sale.*
2. *The alleged difficulties Mr R had with the timeshare.*
3. *Allegedly unfair contract terms.*

One of those difficulties was that Mr R found it difficult to book holidays due to the availability the Supplier offered.

It seems to me that it wasn't long after the Time of Sale that Mr R knew that there were significant problems with the sale causing him financial losses because it is suggested he was struggling to book the holidays he wanted despite paying for the privilege of being able to do so.

So, when it looked like that was the case, Mr R 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 he says followed. One of those parties was, quite obviously, the Supplier. But Mr R 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 Mr R found himself 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 him to carry out enquiries when the concerns about the loan and timeshare first arose in order to establish what his rights were.

What's more, Mr R'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 Mr R wasn't already aware of the implications of his concerns and the possible complaints that he 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 he ought reasonably to have taken shortly after he acquired the timeshare when he began to have concerns about how it had been sold. And had Mr R carried out such enquiries, I think they would have led him to discover that the Lender, as the connected lender that financed the transaction, may well have borne responsibility for the problems Mr R says he had with his timeshare.

With that being the case, I think that Mr R ought reasonably to have been aware that he had cause to complain about the Lender holding him 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 Mr R's complaint about an unfair credit relationship under Section 140A of the CCA. And that means he had to complain about the Lender's role in such a relationship by 24 April 2020. But as he didn't do that until 2 November 2021, 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 Mr R weren't carried out to determine the affordability of the loan for him. 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 Mr R. I wouldn't have expected him 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 Mr R became aware or ought to have become aware until several years later, most likely when he instructed the PR in 2021.

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 Mr R's complaint about the lending. On the basis that he probably didn't become aware until around 2021, I think he 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, I can't say that there are any other exceptional circumstances that apply to Mr R's complaint about an unfair credit relationship with the Lender.

I realise that this will be disappointing for Mr R. But I hope he understands why I can't disregard the rules that apply.

Mr R'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 Mr R was actually unaffordable before also concluding that he lost out as a result and then consider whether the credit relationship with the Lender was unfair to him for this reason.

I'm also mindful of the fact that, as noted above, the loan was in fact settled in full within around six months.

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

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 Mr R'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 Mr R 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 Mr R entered into the purchase of his timeshare at that time based on the alleged misrepresentations of the Supplier – which he says were relied upon. And as the loan from the Lender was used to help finance the purchase, it was when he entered into the Credit Agreement that he suffered a loss.

Mr R first notified the Lender of his Section 75 claim on 2 November 2021. 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 Mr R'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 Mr R as an investment.

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 noted above when looking at the claim there was an unfair credit relationship, Mr R says that he could not holiday where and when he 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 LA.

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 R states that the availability of holidays was/is subject to demand. It also looks like he made use of his fractional points to holiday. 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 R 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.

Mr R's Commission Complaint

I note that one of Mr R's other concerns relates to alleged payments of commission by the Lender to the Supplier for acting as a credit broker and arranging the Credit Agreement.

*The Supreme Court's recent judgment *Johnson v FirstRand Bank Ltd, Wrench v FirstRand Bank Ltd and Hopcraft v Close Brothers Ltd* [2025] UKSC 33 ('Johnson, Wrench and Hopcraft') clarified the law on payments of commission – albeit in the context of car dealers acting as credit brokers.*

In my view, the Supreme Court's judgment sets out principles which appear capable of applying to credit brokers other than car dealer–credit brokers. At present, I do not know enough about the relevant arrangements in place at the Time of Sale. So, once I know more, I will finalise my findings on this complaint.

Conclusion

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 claims, and if I put the issue of commission to one side for the time being, I am not persuaded that the Lender was party to a credit relationship with Mr R under the Credit Agreement that was unfair to him for the purposes of Section 140A of the CCA – nor do I see any other reason why it would be fair or reasonable to direct the Lender to compensate him.

*But, as I've already said, it is necessary to wait for information on the relevant arrangements (considered in *Johnson, Wrench and Hopcraft*) between the Lender and Supplier before finalising my thoughts on the merits of this complaint.'*

After finalising my decision on what parts of Mr R's complaint this service could – and couldn't – consider, I sent the parties my thoughts on his commission complaint and provided them with the opportunity to respond. My thoughts included the following:

'In my provisional decision, I noted that one of Mr R's other concerns related to the alleged payment of commission by the Lender to the Supplier for acting as a credit broker and arranging the Credit Agreement. But, I said that the Supreme Court's pending (at that time) judgment on this issue may prove important to this complaint. So, I explained that I wouldn't finalise my thoughts on this complaint until it had been handed down and I'd considered its implications on this complaint, if there are any.

As that has now happened and I've considered it, I'm outlining my thoughts on this issue in this letter so that both parties have the opportunity to respond before I finalise my 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 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

The provision of information by the Supplier at the Time of Sale

The PR says that a payment of commission from the Lender to the Supplier at the Time of Sale should lead me to uphold this complaint because, simply put, information in relation to that payment went undisclosed at the Time of Sale.

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 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 Mr R entered into wasn't high. At £531.47, it was only 9.75% of the amount borrowed and even less than that (5.34%) 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 persuaded that he either wouldn't have understood that or would have otherwise questioned the size of the payment at that time. After all, Mr R wanted Fractional Club membership and had no obvious means of his 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 he wanted doesn't strike me as disproportionate. So, I think he would still have taken out the loan to fund his purchase at the Time of Sale had the amount of commission been disclosed.

What's more, based on what I've seen so far, 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 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 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 him. 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 Mr R would still have taken out the loan to fund his purchase at the Time of Sale had there been more adequate disclosure of the commission arrangements that applied at that time.'

The Lender did not respond to my PD or my findings on commission.

The PR accepted my findings on commission. But it maintained that the Lender's response to Mr R's Section 75 misrepresentation and breach(es) of contract claims was unfair and felt it had overcharged him interest on the loan.

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.

I've already finalised by thoughts on what parts of Mr R's complaint this service can – and can't – consider. I don't intend to address that again in this decision. Rather, I've focused here on addressing what I consider to be the key issues in deciding the merits of 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 Mr R's concerns about the Supplier's alleged misrepresentations or breach(es) of contract 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 and breach(es) of contract

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 and I've not seen anything since to persuade me otherwise.

Nor have I seen persuasive evidence to show that the Lender is liable to pay Mr R any compensation for a breach of contract by the Supplier.

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 Mr R was actually unaffordable before also concluding that he lost out as a result and then consider whether the credit relationship with the Lender was unfair to him 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 6 months into the 180-month term.

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

Overcharging of Interest Complaint

The PR said that my provisional decision did not address Mr R's complaint about the alleged overcharging of interest by the Lender 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 Mr R 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 Mr R 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. He knew how much he was repaying each month and for how long, and there is no evidence that he 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 Mr R's decision to take out the loan. It follows, I can't say Mr R'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 Mr R's Section 75 claims or any other aspect of his 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 him.

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 Mr R to accept or reject my decision before 6 February 2026.

Nimish Patel
Ombudsman