

The complaint

Mr A'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 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 A 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 6 October 2013 (the 'Time of Sale'). He entered into an agreement with the Supplier to buy 2,630 fractional points at a cost of £37,256 (the 'Purchase Agreement'). But after trading in his existing timeshare he paid £9,745.

Fractional Club membership was asset backed – which meant it gave Mr A 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 his membership term ends.

Mr A paid for his Fractional Club membership by taking finance of £9,745 from the Lender (the 'Credit Agreement').

Mr A – using a professional representative (the 'PR') – wrote to the Lender on 10 October 2023 (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 dealt with Mr A's concerns as a complaint and issued its final response letter on 2 November 2023, rejecting it on every ground. The complaint was then referred to the Financial Ombudsman Service.

I issued a provisional decision in October 2025 explaining why I planned to conclude that part of Mr A's complaint was not within the Financial Ombudsman Service's jurisdiction, and why I didn't plan to uphold the parts that were within jurisdiction. In relation to the parts of the complaint I said were in jurisdiction, I said:

Mr A's complaint that the credit broker was not authorised

The PR has argued that 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 Mr A knew, amongst other things, how much he was borrowing and repaying each month, who he was borrowing from and that he was borrowing money to pay for Fractional Club membership. So, 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 Mr A's 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

him, even if the loan wasn't arranged properly.

Mr A's Section 75 Complaint

Section 75 of the CCA operates quite differently to Section 140A and, when it applies, it can give borrowers a very different ground for complaint against their lender. Whereas, as I've explained, Section 140A imposes responsibilities on creditors in relation to the fairness of their credit relationships, Section 75 simply 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.

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

Section 75 does not apply to a claim so far as that claim relates to any single item to which the supplier has attached a cash price not exceeding £100 or more than £30,000. A document called the 'Fractional Property Owners Club Pricing Summary' shows the purchase price of Fractional Club membership before Mr A traded in his existing timeshare was £37,256, which is of course more than £30,000. So, it appears unlikely that Section 75 applied to Mr A's claim for misrepresentation and the Lender did not unreasonably reject such claim. However, even if that were not the case, there is another reason why I don't think the Supplier was unreasonable to reject Mr A's claim for misrepresentation.

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 A's Section 75 claim for misrepresentation was time-barred under the LA 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 Mr A 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 A 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 A first notified the Lender of his Section 75 claim on 10 October 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 Mr A'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 I explained above, it is possible Section 75 did not apply to Mr A's claim because the cash price attached to Fractional Club membership by the Supplier was more than £30,000. In such case Section 75A of the CCA can provide assistance to a debtor where the "cash value" of the goods is more than £30,000 and makes a creditor similarly liable to a debtor for a breach of contract (but not misrepresentation) by a supplier in certain circumstances. It's not clear in this case if all those circumstances applied here – for example there are conditions in section 75A (2) (a) to (d) and it's not clear from the available evidence whether Mr A had met one of these. I make no finding on this again however as either way I don't think the Lender acted unfairly or unreasonably in relation to this aspect of the complaint for reasons I'll explain...

...Mr A 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 A states that the availability of holidays 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 A 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 A's complaint about interest

It has been submitted by the PR that the Lender did not properly calculate the interest due to be paid by Mr A, meaning he has 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 Mr A in that agreement setting out the total interest payable if the loan ran to term as well as the monthly repayment. But 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, I can't see Mr A lost out as a result. 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 A's decision to take out the loan. It follows, I can't say Mr A has lost out or that the Lender needs to do anything further because of this issue.

Mr A didn't agree with my provisional decision and the PR provided further comments and evidence for me to consider.

The Lender did not respond.

I then issued a decision finalising my thoughts on the Financial Ombudsman Service's jurisdiction to consider Mr A's complaint. I concluded that Mr A's complaint about the Lender being party to an allegedly unfair credit relationship with him under Section 140A of the CCA had been brought out of time and so was out of jurisdiction. But I said I could look at the remainder of his complaint.

I am therefore now finalising my decision on the remaining parts of Mr A's complaint.

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.

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.

The PR's further comments in response to my provisional decision in the main relate to the issues of the way interest was calculated under the Credit Agreement and Mr A's Section 75 claims.

As outlined in my provisional decision, the PR originally raised various other points of complaint, all of which I addressed at that time. But they didn't make any further comments in relation to those in their response to my provisional decision. Indeed, they haven't said they disagree with any of my provisional conclusions in relation to those other points (save for those on jurisdiction which were addressed in a separate decision). And since I haven't been provided with anything more in relation to those other points by either party, I see no reason to change my conclusions in relation to them as set out in my provisional decision. So, I'll focus here on the PR's points raised in its response.

Mr A's complaint regarding his allegation the Lender did not properly calculate the interest due to be paid by him meaning he has been overcharged

The PR said that while my provisional decision addressed Mr A's complaint about the alleged overcharging of interest by the Lender in the context of rendering his 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 Financial Conduct Authority Consumer Credit Sourcebook ('CONC').

For the avoidance of doubt, the reasons given in my provisional decision as to why Mr A didn't lose out even if the Lender wasn't clear enough or gave incorrect information about interest apply equally to any standalone complaint he may have in respect of a potential breach of CONC (although I make no finding on whether there was such a breach). I said in my provisional decision that I didn't think the Lender needed to do anything further because of this issue and this remains the case. I've not seen anything that persuades me the conclusion I reached in my provisional on this point was unfair or unreasonable. So, I see no reason to depart from it.

Mr A's complaint about the Lender's handling of his Section 75 claims

The PR said my findings on this point disregarded Section 32 of the Limitation Act 1980 (the LA') which suspends limitation where a claim is based on misrepresentation concealed by the defendant until the claimant discovered (or could reasonably have discovered) the truth. It said Mr A only became aware that the timeshare's alleged "asset-backed" nature was false after industry investigations and media reports surfaced from 2019 onward and he made his claim within six years of this.

However, the 'asset backed' nature of Fractional Club membership is not false as membership clearly included a share in the net sale proceeds of the allocated property and this was clear from the paperwork that Mr A would have seen at the Time of Sale. I do not

think that Section 32 of the LA therefore extended the time within which Mr A could make his claim for the reasons the PR gave. I still don't find the Lender unreasonably declined to meet Mr A's Section 75 claim as more than six years had passed between the Time of Sale (when the misrepresentation cause of action arose) and when he made that claim.

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 A's Section 75 claims. 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 reasons I've explained, I do not uphold Mr A's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 18 February 2026.

Michael Ball
Ombudsman