

The complaint

Mr B'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 Mr B under Section 140A of the Consumer Credit Act 1974 (as amended) (the 'CCA'), (2) deciding against paying a claim under Section 75 of the CCA and (3) lending to Mr B when he could not afford to repay the loan¹.

What happened

Mr B purchased membership of a timeshare (the 'Fractional Destinations Club') from a timeshare provider (the 'Supplier') on 21 November 2011 (the 'Time of Sale'). He entered into an agreement with the Supplier to buy a one-week fraction at a cost of £13,694 (the 'Purchase Agreement'). This gave him the rights to take a one-week holiday with the Supplier each year of the membership term, plus a share in the net sale proceeds of a property named on the Purchase Agreement, which would be sold at the end of his membership term.

Mr B paid for his Fractional Destinations Club membership by taking finance of £13,694 from the Lender (the 'Credit Agreement').

Mr B paid off the Credit Agreement and the associated credit relationship with the Lender ended on 12 March 2012.

Mr B – using a professional representative (the 'PR') – wrote to the Lender on 1 August 2022 (the 'Letter of Complaint') to raise several different concerns (and added some further concerns later). 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 B's concerns as a complaint and issued its final response letter on 5 January 2023, rejecting it on every ground.

The complaint was then referred to the Financial Ombudsman Service. It was assessed by an Investigator who, having considered the information on file, said the following aspects of the complaint were outside of our jurisdiction because they were referred too late:

- (1) The Lender being party to an unfair credit relationship with Mr B.

And that the remainder of the complaint was rejected on its merits.

The PR has confirmed its acceptance of our Investigator's assessment in terms of which parts of the complaint we can consider. But it disagreed with the Investigator's assessment on the merits of those parts of the complaint and asked for an Ombudsman's decision – which is why it was passed to me. As such, this decision deals with the merits of complaint points (2) and (3) above.

¹ The PR also raised some other complaint points regarding interest overcharging and commission but has since confirmed it does not require that a decision be made on the merits of those.

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.

Having done so, I have decided not to uphold this complaint.

(2) 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 B'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 B 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 B entered 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 B first notified the Lender of his Section 75 claim on 1 August 2022. 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 B's concerns about the Supplier's alleged misrepresentations.

I have considered Section 32 of the LA, but I am not persuaded it provided Mr B with more time to make the claim.

(3) Lending complaint

I haven't seen anything to persuade me that the right checks weren't carried out by the Lender. Nor that the Credit Agreement was unaffordable. After all, Mr B repaid the loan just four months after taking it out. So, even if the right checks were not carried out, I see no reason to conclude that the Lender's decision to provide Mr B with the loan was irresponsible, nor to uphold this complaint.

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 Mr B to accept or reject my decision before 25 February 2026.

Phillip Lai-Fang
Ombudsman