

The complaint

Mr B 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 unfair credit relationships with him under Section 140A of the Consumer Credit Act 1974 ('CCA').
2. Deciding against paying claims made under Section 75 of the CCA.

What happened

Mr B purchased membership of a timeshare (the 'Fractional Club') from a timeshare provider (the 'Supplier') on 10 September 2012 (the 'First Time of Sale'). Mr B paid for his Fractional Club membership by taking finance from the Lender (the 'First Credit Agreement').

Mr B upgraded his Fractional Club membership on 27 June 2013 (the 'Second Time of Sale'). After trading in his previous membership, he paid for the remainder of the cost by taking further finance from the Lender (the 'Second Credit Agreement').

The First Credit Agreement ended around 27 June 2013 once the outstanding balance had been consolidated into the Second Credit Agreement. The Second Credit Agreement ended on 12 January 2015 when Mr B settled the outstanding balance. On each of these dates the relevant credit relationship with the Lender ended.

Mr B – using a professional representative (the 'PR') – wrote to the Lender on 22 February 2022 (the 'Letter of Complaint') to raise a number of different concerns. As those concerns haven't changed since they were first raised, and as both sides are familiar with them, 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 April 2022, 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 that Mr B's concerns about the credit relationships being unfair had been made out of time, and the remainder of his complaint should not be upheld.

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

I recently issued a decision concerning our jurisdiction to consider Mr B's complaint. I concluded that his complaint about unfair credit relationships had been made out of time, but his complaint about the Lender's rejection of his Section 75 claims had been made in time.

Therefore, this final decision relates solely to Mr B's complaint about the Lender's rejection of his Section 75 claim.

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.

This part of Mr B's complaint was made for several reasons, which included that the Supplier misrepresented Fractional Club membership at the Times of Sale as it told him he had purchased investments which would considerably increase in value and that he would have "access to the holiday's apartment at any time all around the year."

Generally, creditors can reasonably reject Section 75 claims that they are first made aware of after the claim has become time barred under the Limitation Act (the 'LA'), as it wouldn't be fair to expect them to look into such claims so long after the liability arose, and after a limitation defence would have been available in court. Therefore, it's relevant to consider whether Mr B's Section 75 claims were time barred under the LA before he put them to the Lender.

A claim under Section 75 is a "like claim against the creditor". It in effect mirrors the claim a consumer could make against the Supplier.

A claim for misrepresentation against the Supplier would typically 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).

However, a claim under Section 75, like the ones in question here, is also "an action to recover any sum by virtue of any enactment" under Section 9 of the LA. The limitation period under that provision is also six years from the date on which the cause of action accrued.

The dates on which the causes of action accrued were the Times of Sale. That's when Mr B entered into the purchases of his timeshares based on the alleged misrepresentations of the Supplier – which he says he relied on. Further, as the loans from the Lender were used to help finance the purchases, it was when he entered into the Credit Agreements that he suffered losses.

Mr B first notified the Lender of his Section 75 claims on 22 February 2022. Given more than six years had passed between the Times of Sale and when he first put his claims to the Lender, in my view it was neither unfair nor unreasonable that the Lender rejected his concerns about the Supplier's alleged misrepresentations.

It follows that I do not consider this complaint should be upheld.

My final decision

My final decision is to not uphold Mr B's complaint about Mitsubishi HC Capital UK PLC, trading as Novuna Personal Finance, regarding its rejection of his Section 75 claims.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 5 March 2026.

Alex Salton
Ombudsman