

The complaint

Mrs 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 them 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

Mrs L purchased membership of a timeshare (the 'Fractional Club') from a timeshare provider (the 'Supplier') on 05 June 2013 (the 'Time of Sale'). She entered into an agreement with the Supplier to buy 1,080 fractional points at a cost of £14,749 (the 'Purchase Agreement').

Mrs L paid for their Fractional Club membership by taking finance £14,749 from the Lender (the 'Credit Agreement'). Mrs L paid off the loan and her credit relationship with the Lender ended on 27 August 2013.

Mrs L – using a professional representative (the 'PR') – wrote to the Lender on 8 March 2023 (the 'Letter of Complaint') to raise several different concerns. Since then, the PR has raised some further matters it says are relevant to this 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 Mrs L's concerns as a complaint and issued its final response letter on 30 March 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 that point (1) above was outside of our jurisdiction because the complaint was referred to us too late, and point (2) should not be upheld because the Section 75 claim was made too late, giving the Lender a valid defence to the claim.

Mrs L disagreed with the Investigator's assessment and asked for an Ombudsman's decision – which is why it was passed to me. The PR has confirmed it accepts our Investigator's assessment of our jurisdiction and only requires a decision on point (2).¹

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.

I've decided not to uphold this complaint.

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

¹ The PR also raised some other concerns but has since dropped them – as the PR now accepts they would not lead to the complaint being upheld.

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 Mrs L'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 Mrs 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 Mrs L entered the purchase of his 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.

Mrs L first notified the Lender of his Section 75 claim on 8 March 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 Mrs L's concerns about the Supplier's alleged misrepresentations.

I've considered Sections 14 and 32 of the Limitation Act but am not persuaded they provided Mrs L more time to make the claim.

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 Mrs L to accept or reject my decision before 12 March 2026.

Phillip Lai-Fang
Ombudsman