

## **The complaint**

Mrs M'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 her 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**

Mrs M purchased membership of a timeshare (the 'Fractional Club') from a timeshare provider (the 'Supplier') on 15 November 2011 (the 'Time of Sale'). She entered into an agreement with the Supplier to buy 2,432 fractional points at a cost of £11,699 (the 'Purchase Agreement').

Fractional Club membership was asset backed – which meant it gave Mrs M 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 her membership term ends.

Mrs M paid for her Fractional Club membership by taking finance of £11,699 from the Lender (the 'Credit Agreement').

Mrs M – using a professional representative (the 'PR') – wrote to the Lender on 19 August 2019 (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 Mrs M's concerns as a complaint and issued its final response letter on 4 June 2020, rejecting it on every ground. Although Mrs M had already referred her complaint to the Financial Ombudsman Service by this point, Mrs M re-iterated that she did not accept the Lender's findings.

Mrs M's complaint was assessed by an Investigator who, having considered the information on file, rejected the complaint that the Lender hadn't properly considered a claim made under Section 75 of the CCA on its merits. The Investigator felt that the complaint that there was an unfair credit relationship under Section 140A hadn't been made in time as per the rules that this service must follow and that it couldn't be considered.

Mrs M disagreed with the Investigator's assessment and asked for an Ombudsman's decision – which is why it was passed to me. Since then, the PR has accepted the investigator's view as to the Financial Ombudsman Service's jurisdiction to consider Mrs M's complaint about the Lender's participation in allegedly unfair relationship under Section 140 of the CCA. It has also dropped a complaint it made about the way interest was calculated on the Credit Agreement. However, it has asked for a decision on any remaining matters.

## **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.

### **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 that, I do not think this complaint should be upheld.

However, before I explain why, I want to make it clear that my role as an Ombudsman is not to address every single point that has been made to date. Instead, it is to decide what is fair and reasonable in the circumstances of this complaint. So, if I have not commented on, or referred to, something that either party has said, that does not mean I have not considered it.

It is accepted by the PR that Mrs M's complaint about the Lender's participation in allegedly unfair relationship under Section 140 of the CCA was brought out of time under the Financial Ombudsman Service's rules and is therefore not within its jurisdiction to consider. For the avoidance of doubt, for broadly similar reasons to those the investigator gave, I agree this is the case. I have not therefore considered this part of Mrs M's complaint.

### **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 Mrs M's Section 75 claim for misrepresentation was time-barred under the LA before she 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 M 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 M entered into the purchase of her timeshare at that time based on the alleged misrepresentations of the Supplier – which she said 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 M first notified the Lender of her Section 75 claim on 19 August 2019. 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 M's concerns about the Supplier's alleged misrepresentations.

### **Section 75 of the CCA: the Supplier's Breach of Contract**

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Mrs M said that she could not holiday where and when she 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 Mrs M states that the availability of holidays was/is subject to demand. I accept that she 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 Mrs M 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.

### **Mrs M's complaint that the credit broker was not authorised**

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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 Mrs M knew, amongst other things, how much she was borrowing and repaying each month, who she was borrowing from and that she 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 Mrs M'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 her, even if the loan wasn't arranged properly.

In conclusion, I do not think that the Lender acted unfairly or unreasonably when it dealt with Mrs M'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 her.

### **My final decision**

For the reasons I've explained, I do not uphold Mrs M's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 13 March 2026.

Michael Ball  
**Ombudsman**