

## 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 a claim under Section 75 of the CCA.

The loan in question was taken out in Mr A's name only and as such, he is the only eligible complainant here. But, as the timeshare purchased using the loan was bought in the joint names of Mr A and Miss B, I'll refer to them both throughout where appropriate.

## What happened

Mr A and Miss B purchased membership of a timeshare (the 'Fractional Club') from a timeshare provider (the 'Supplier') on 13 July 2014 (the 'Time of Sale'). They entered into an agreement with the Supplier to buy 1,200 fractional points at a cost of £12,294 (the 'Purchase Agreement').

Fractional Club membership was asset backed – which meant it gave Mr A and Miss B 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 their membership term ends.

Mr A and Miss B paid for their Fractional Club membership by taking finance of £12,294 from the Lender (the 'Credit Agreement') in Mr A's name only. This loan was paid off on 13 November 2014.

Mr A – using a professional representative (the 'PR') – wrote to the Lender on 16 May 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 A's concerns as a complaint and issued its final response letter on 24 June 2022, rejecting it on every ground.

The complaint was then referred to the Financial Ombudsman Service.

## The Investigator's view

The complaint was assessed by an Investigator at this Service who thought that some of Mr A's complaint had been brought too late and was therefore outside of our Service's jurisdiction to consider. And, while the rest of the complaint had been brought in time, they did not think it ought to be upheld. In summary, they said:

- They did not think we could consider Mr A's complaint about an unfair credit relationship under S140A of the CCA. They said this was because he had complained more than six years after the relationship had ended i.e. when the loan was paid off in full in November 2014. They explained that the relevant rule governing our Service's jurisdiction could give Mr A more time to complain if he did

so within three years of when he became aware, or ought reasonably to be aware, of cause for complaint. But from the information provided, they said it wasn't long after the Time of Sale that Mr A knew there were significant problems with the membership causing him a financial loss. Given the size of the loan that Mr A found himself with and because of the membership and the long-term financial consequences of both of those commitments for him and Miss B, the Investigator felt it was reasonable to have expected Mr A to carry out enquiries when his concerns about his loan and the membership first arose in order to establish what his rights were. And they said that had he carried out such enquiries, they thought this would have led him to discover that the Lender that financed the transaction, may well have borne responsibility for the problems he says he had. And for that reason, they were not persuaded that the three-year part of the relevant time limit extends the six-year part of it for the purpose of Mr A's complaint about an unfair credit relationship under Section 140A of the CCA. So, they said that means Mr A had to complain about the Lender's role in such a relationship by 13 November 2020. But as Mr A didn't do that until 6 May 2022, they said the complaint about this was too late under our Service's rules and therefore we could not consider this point.

- They also said they had not seen any exceptional circumstances which might mean our Service would be able to waive the relevant time limits here.
- The Investigator also felt Mr A's complaint about responsible lending had been made too late for our Service to consider. They said this because their decision to lend was made more than six years before the complaint was made to the Lender. They noted Mr A's complaint was that he didn't think any affordability checks were carried out at the Time of Sale. The Investigator said they thought it would be reasonable for a consumer like Mr A to understand the importance of such checks when being lent to. So, again, they didn't think the three year part of the relevant rule extended the six year part of it for the purpose of this point of complaint. And therefore, they said our Service also could not consider this point.
- Regarding Mr A's Section 75 claim for misrepresentation, the Investigator noted that the activity our Service was being asked to consider was the Lender's handling of, and response to, the Section 75 claim. So, as the claim was made in May 2022 and answered in the Lender's final response sent in June 2022, after which it was referred to our Service, this is a complaint point our Service can consider.
- However, they did not think it would be fair or reasonable to uphold the complaint for reasons relating to Mr A's Section 75 claim as it wouldn't be fair to expect a creditor to look into such a claim so long after the liability arose and after a limitation defence (under the Limitation Act 1980 (the 'LA')) would be available in court. They said that under the LA, a claim had to be made within 6 years of when a consumer had everything needed to make such a claim. And as I think that Mr A had everything he
- needed at, or very shortly after, the Time of Sale (which was more than 6 years before he made his claim), they didn't think it was unfair or unreasonable of the Lender to refuse his Section 75 claim given its timing.
- Lastly, the Investigator also addressed the allegation that the credit broker was not authorised at the Time of Sale to broker credit. But, they explained they hadn't seen anything which persuaded them that the credit broker lacked the relevant authorisation at the Time of Sale or that this was a reason to uphold the complaint.

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

## **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 Consumer Credit Sourcebook ('CONC') – Found in the Financial Conduct Authority's (the 'FCA') Handbook of Rules and Guidance

Below are the most relevant provisions and/or guidance as they were at the relevant time:

- CONC 3.7.3 [R]
- CONC 4.5.3 [R]
- CONC 4.5.2 [G]

The FCA's Principles

The rules on consumer credit sit alongside the wider obligations of firms, such as the Principles for Businesses ('PRIN'). Set out below are those that are most relevant to this complaint:

- Principle 6
- Principle 7
- Principle 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.

And having done so, I've reached the same outcome as the Investigator, for broadly the same reasons.

I'd like to firstly outline that 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 only disputed two points further in response to the Investigator's view. Firstly, the authorisation of the credit broker. And secondly, the undisclosed payment of commission by the Lender to the Supplier at the Time of Sale which they suggested could lead to an unfair credit relationship.

As outlined by the Investigator, the PR originally raised various other points of complaint, all of which they addressed. But the PR didn't make any further comments in relation to those in their response to the Investigator's view. Indeed, they haven't said they disagree with any of

the Investigator's conclusions in relation to those other points. And since nothing more has been provided in relation to those other points by either party, I see no reason to reach a different conclusion to the Investigator on those other points, including in relation to our Service's jurisdiction and the points we can't consider. So, I'll focus here on the PR's points raised in response.

#### Authorisation of the credit broker

In response to the Investigator's view, the PR has continued to argue 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.

The Lender has provided some further information about this from the Supplier. They've explained that the credit broker noted on the loan agreement ('CLC Resort Developments Ltd') was auto-populated in error on their system. And, in fact the relevant broker was 'Continental Resorts Services SLU' who held interim permission from the Financial Conduct Authority (FCA) at the Time of Sale. And, they've pointed to various parts of the other sales documentation which reflects this.

I'm aware from our Service's own records that this entity did hold a licence issued by the Office of Fair Trading from 2009 onwards. And, as the Supplier has indicated, that they were authorised on an interim permission basis from April 2014 onwards.

But even if this wasn't the case, 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 – such that I should uphold this complaint as a result. 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 Commission complaint

As already set out, the Investigator found that the complaint that Mr A's credit relationship with the Lender was unfair isn't in the jurisdiction of the Financial Ombudsman Service. The PR did not dispute this any further in their response and for the avoidance of doubt, I agree with the Investigator's conclusion in this regard.

But, two of the grounds of complaint now raised by the PR relating to the commission arrangements between the Lender and the Supplier also constitute separate and freestanding complaints. So, for completeness, I've considered those grounds on that basis here.

The first ground relates to the Lender's compliance with the regulatory guidance in place at the Time of Sale<sup>1</sup> insofar as it was relevant to disclosing the commission arrangements between them, and the second relates to whether the Lender is liable for the dishonest assistance of a breach of fiduciary duty by the Supplier because it took a payment of commission from the Lender without telling Mr A (i.e., secretly).

As both sides already know, the Supreme Court handed down an important judgment on 1 August 2025 in a series of cases concerned with the issue of commission: *Johnson v FirstRand Bank Ltd*, *Wrench v FirstRand Bank Ltd* and *Hopcraft v Close Brothers Ltd* [2025] UKSC 33 ('Hopcraft, Johnson and Wrench').

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<sup>1</sup> See 'the legal and regulatory context' section above.

I acknowledge that it's possible that the Lender and the Supplier failed to follow the regulatory guidance in place at the Time of Sale insofar as it was relevant to disclosing the commission arrangements between them.

But regulatory breaches do not automatically mean a remedy is due. Such breaches and their consequences (if there are any) must be considered in the round, rather than in a narrow or technical way. And with that being the case, it isn't necessary to make a formal finding on that because, even if the Lender and the Supplier failed to follow the relevant regulatory guidance at the Time of Sale, it is for the reasons set out below that I don't currently think any such failure is itself a reason to require the Lender to pay compensation to Mr A.

In stark contrast to the facts of Mr Johnson's case, the amount of commission paid by the Lender to the Supplier for arranging the Credit Agreement that Mr A entered into wasn't high. At £1,198.67, it was only 9.8% of the amount borrowed and even less than that (8.7%) as a proportion of the charge for credit. So, had he known at the Time of Sale that the Supplier was going to be paid a flat rate of commission at that level, I'm not currently persuaded that Mr A either wouldn't have understood that or would have otherwise questioned the size of the payment at that time. After all, Mr A wanted Fractional Club membership and had no obvious means of his own to pay for it. And at such a low level, the impact of commission on the cost of the credit he needed for a timeshare he wanted doesn't strike me as disproportionate. So, I think Mr A would still have taken out the loan to fund his purchase at the Time of Sale had the amount of commission been disclosed.

What's more, based on what I've seen so far, the Supplier's role as a credit broker wasn't a separate service and distinct from its role as the seller of timeshares. It was simply a means to an end in the Supplier's overall pursuit of a successful timeshare sale. I can't see that the Supplier gave an undertaking – either expressly or impliedly – to put to one side its commercial interests in pursuit of that goal when arranging the Credit Agreement. And as it wasn't acting as an agent of Mr A but as the supplier of contractual rights he obtained under the Purchase Agreement, the transaction doesn't strike me as one with features that suggest the Supplier had an obligation of 'loyalty' to him when arranging the Credit Agreement and thus a fiduciary duty.

So, for the reasons I set out above, I'm not persuaded that the Supplier – when acting as credit broker – owed Mr A a fiduciary duty. So, the remedies that might be available at law in relation to the payment of secret commission aren't, in my view, available to him. And while it's possible that the Lender failed to follow the regulatory guidance in place at the Time of Sale insofar as it was relevant to disclosing the commission arrangements between it and the Supplier, I don't think any such failure on the Lender's part is itself a reason to uphold this complaint because, for the reasons I also set out above, I think Mr A would still have taken out the loan to fund his purchase at the Time of Sale had there been more adequate disclosure of the commission arrangements that applied at that time.

## **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 claim. 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 set out above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or

reject my decision before 18 March 2026.

Fiona Mallinson  
**Ombudsman**