

## 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 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

Mr and Mrs B were members of a timeshare provider (the 'Supplier') – having purchased a number of products from it over time. But the product at the centre of this complaint is their membership of a timeshare that I'll call the 'Fractional Club' – which they bought on 13 May 2012 (the 'Time of Sale'). They entered into an agreement with the Supplier to buy 4,140 fractional points at a cost of £10,899 (the 'Purchase Agreement'). Mr and Mrs B paid for their Fractional Club membership by taking finance of £10,899 from the Lender (the 'Credit Agreement') in Mr B's name only.

Fractional Club membership was asset backed – which meant it gave Mr and Mrs 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.

In March 2021 Mr B – using a professional representative (the 'PR') – first complained to the Lender that the broker of the loan, C, wasn't permitted or authorised to arrange loans. He also said that there hadn't been any affordability checks and that the sales process hadn't been transparent.

The Lender dealt with Mr B's concerns as a complaint, rejecting it on every ground. The complaint was then referred to the Financial Ombudsman Service. It was ultimately determined in April 2023 by an Ombudsman who, having considered the information on file, rejected the complaint on its merits.

The PR had said that this service should have considered Mr B's complaints in relation to potential claims under sections 75 and 140A of the Consumer Credit Act 1974 even though he accepted he didn't make any actual claims under those sections to the Lender. The Ombudsman remarked that if Mr B wished to pursue such claims, then he needed to raise them with the Lender first. If he then disagreed with the outcome of those claims, then he would need to complain to the Lender about its handling of them. And if he remained unhappy at the Lender's response to that complaint, he could refer to this service. The Ombudsman did not therefore consider either section 75 or section 140A of the Consumer Credit Act as part of her decision.

Mr B – using the same professional representative (the 'PR') – wrote again to the Lender on 17 August 2023 (the 'Letter of Complaint') to raise a number of different concerns as claims under sections 75 and 140A of the. 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.

The Lender dealt with Mr B's concerns as a complaint and issued its final response letter on

2 January 2024. It said the complaint was time barred under the Limitation Act 1980 as it had been made more than six years after the Time of Sale and more than six years since the finance had been repaid.

Mr B then referred the complaint to the Financial Ombudsman Service. It was assessed by an Investigator who, having considered the information on file, noted Mr B had also referred a complaint to this service in October 2021 about the same timeshare purchase. That complaint had not been upheld. The matters in dispute included the decision to lend being irresponsible and the Credit Agreement being unenforceable as it wasn't arranged by a regulated credit broker. So, the investigator explained that he would not look at these points a second time.

The Investigator considered Mr B's complaint about the Lender deciding against paying a claim under Section 75 of the CCA had been made inside our time limits, but he didn't think it was unfair for the Lender to rely on the Limitation Act 1980 to defend the claim. Although the Investigator acknowledged the Lender also addressed the complaint as an allegation its relationship was unfair to Mr B under Section 140A of the CCA, as the PR did not expressly refer that matter to this service, he did not consider it further.

This decision is the second of two decisions on Mr B's complaint. In this decision I will deal only with the Lender declining to accept and pay Mr B's claim under Section 75 of the CCA. I have already addressed the remaining points of his complaint in a separate decision.

I issued my provisional decision to both parties explaining the parts of this complaint that I can and cannot consider under the Financial Ombudsman Service's jurisdiction and why I thought the parts of this complaint I can consider do not uphold. My provisional findings which are copied below now form part of this final decision.

#### Provisional findings

*"I've read and considered all the available evidence and arguments to decide whether the Financial Ombudsman Service's jurisdiction permits me to consider the entire subject matter of this complaint. It seems to me that in addition to the allegations of misrepresentation by the Supplier, Mr B has concerns about the unfairness of the relationship between him and the Lender, irresponsible lending, and the regulatory status of the credit broker. So, I've considered in the first instance whether I can consider Mr B's concerns of unfairness in respect of this sale and whether I should consider Mr B's concerns about the lending and the credit broker. And having done so, I've provisionally concluded that:*

- i. Mr B's complaint about a credit relationship with the Lender that was unfair to him is not within our jurisdiction because it wasn't made within the time limits set out in DISP 2.8.2 R (2).*
- ii. Mr B's complaints about the decision to lend being irresponsible and the Credit Agreement being unenforceable as it was not arranged by a regulated credit broker should be dismissed because they were dealt with as a separate case.*
- iii. The rest of Mr B's complaint – about the Lender's decision to reject his concerns about the Supplier's alleged misrepresentations under Section 75 of the CCA – was made in time under DISP 2.8.2 R (2). But for the reasons I give below, I don't think these aspects of the complaint should succeed.*

*I'll explain my reasons for my conclusions below.*

...

Mr B's complaint about the Lender declining to accept and pay his claim under Section 75 of the CCA

Section 75 of the CCA operates quite differently to Section 140A and, when it applies, it can give borrowers a very different ground for complaint against their lender. Whereas, as I've explained, Section 140A imposes responsibilities on creditors in relation to the fairness of their credit relationships, Section 75 simply creates a financial liability that the creditor is bound to pay. Liability under Section 75 isn't based on anything the lender does wrong, but upon the misrepresentations and breaches of contract by the supplier, for which Section 75 imposes on the lender a "like claim" to that which the borrower enjoys against the Supplier. If the lender is notified of a valid Section 75 claim, it should pay its liability. And if it fails or refuses to do so, that failure or refusal can give rise to a complaint to the Financial Ombudsman Service.

So, when a complaint is referred to the Financial Ombudsman Service on the back of an unsuccessful attempt to advance a Section 75 claim, the act or omission that engages the Service's jurisdiction is the creditor's refusal to accept and pay the debtor's claim – rather than anything that occurs before the claim was put to the creditor, such as the supplier's alleged misrepresentation(s) and/or breach(es) of contract.

As a result, the six and three-year time limit (under DISP 2.8.2 (2) R) to complain about an unsuccessful attempt to initiate a Section 75 claim doesn't usually start until the respondent firm answers and refuses the claim.

In this case, as the Lender refused to accept and pay Mr B's claim on 2 January 2024, the primary time limit (of six years) only started at that time. And the complaint about the Lender's handling of this claim was referred to the Financial Ombudsman Service in time for the purpose of the rules on our jurisdiction.

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 'Limitation Act') 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 Limitation Act 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 Limitation Act).

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 Limitation Act. 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 into 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 Mr B entered into the Credit Agreement that he suffered a loss.

*Mr B first notified the Lender of his Section 75 claim on 17 August 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 raise the Limitation Act as reason to defend Mr B's concerns about the Supplier's alleged misrepresentations.*

*The PR says section 32(1) of the Limitation Act gives Mr B more time to make his claim. Again, I disagree. Section 32(1) of the Limitation Act has the potential to postpone the relevant limitation period in cases of fraud, concealment, or mistake. I have thought about that here. But in this case the PR has simply referenced section 32(1), but it hasn't explained what acts the Supplier carried out, that would make it a relevant consideration that might extend time. So, I find it very difficult to see taking into account the brief submissions provided by the PR in this case, how section 32(1) could extend the time limit for Mr B.*

*In the complaint referral to this service, the PR referred to a number of concerns that Mr B became aware of shortly after purchasing his Timeshare. And in particular, he refers to not being able to go on the holidays he wanted at the times he wanted. So, my understanding is that he believed the Timeshare was misrepresented because they couldn't holiday in the way they say they were led to believe by the Supplier. But that would have been clear to them soon after the Time of Sale.*

*So, even if it could be said that section 32(1) is likely to have postponed the limitation period until he first discovered that the availability of holidays was not what he thought it would be (and I make no such finding that it would), I'm not persuaded that would make a difference here."*

#### Responses to my provisional decision

Novuna Personal Finance hasn't responded to my provisional decision.

The PR responded on Mr B's behalf and disagreed with my provisional findings. In summary, the PR made the following representations:

- It reminded me of my statutory obligation under DISP 3.6.1R to determine complaints by reference to what is fair and reasonable in all the circumstances.
- It pointed to DISP 3.3.4B(3) as it considered legal arguments have come to light that were not previously available – namely the judgment in *R (on the application of Shawbrook Bank Ltd) v Financial Ombudsman Service Ltd*; *R. (on the application of Clydesdale Financial Services Ltd (t/a Barclays Partner Finance)) v. Financial Ombudsman Service [2023] EWHC 1069 (Admin)* – which it suggests extends the time limit available to Mr B.
- It raised the application of the Limitation Act and argued that it would be unfair to exclude Mr B's complaint on limitation grounds.

#### **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 considered the matter once more, together with all the additional submissions and points made by Mr B's representatives, I have not seen enough to persuade me to change the outcome I reached in my provisional decision about the Lender declining to accept and pay Mr B's claim under section 75 of the CCA. I'll explain.

PR has asked me to reconsider my provisional findings on section 32 of the Limitation Act, which states that in cases where an action is based on the fraud of the defendant or a fact

relevant to the right of action has been deliberately concealed from the claimant by the defendant, the limitation period only starts to run from when a claimant discovers the fraud or concealment (or could have discovered it using reasonable diligence).

PR has argued that:

- under the CCA, Novuna is bound by the fraud of the Supplier.
- the facts relevant to Mr B's claim was not known to him at the time of sale and he was unaware at the time that the purchase was based on misrepresentation.
- Mr B was unaware that the purchase in question was 'unlawful' until the judgment in a judicial review was handed down in R (on the application of Shawbrook Bank Ltd) v. Financial Ombudsman Service Ltd; R. (on the application of Clydesdale Financial Services Ltd (t/a Barclays Partner Finance)) v. Financial Ombudsman Service [2023] EWHC 1069 (Admin) ("Shawbrook & BPF v. FOS").
- The misrepresentations made, being fraudulent, must have been known to be false by the Supplier.

The Limitation Act provides for extensions of the time limits in certain circumstances. I have considered the facts of this complaint and I do not think the time limits I have set out in my provisional decision can be extended under any of the provisions of the Limitation Act. I have considered several reasons specifically raised in more detail.

For the avoidance of doubt, here I am only concerned with the claim made by Mr B under section 75 CCA that Novuna is jointly liable for the Supplier's misrepresentations, namely that the Supplier misrepresented the holidays that Mr B could take using the membership, that the resorts were exclusive and that the management fee cost increased faster than he was told it would. The judgment in Shawbrook & BPF v. FOS relates to a completely different matter, namely whether the way a timeshare was sold could give rise to an unfair credit relationship under s.140A CCA, and I fail to see how Mr B was not made aware of the misrepresentations he now complains about until that judgment was handed down.

Having considered everything, I do not think that section 32 Limitation Act assists Mr B in bringing his claim. PR has not set out what facts it says were deliberately concealed from Mr B, so I cannot see how that part of section 32 Limitation Act could apply. Further, PR says that representations made to Mr B were fraudulent misrepresentations. For there to be a cause of action for a fraudulent misrepresentation, and therefore one which Novuna could be jointly liable for under section 75 CCA, there are a number of things needed to be found. There would need to be a false representation by the fraudster, that representation would need to have been made knowing it was false (or being reckless as whether it was false), the fraudster would need to intend the claimant acts in reliance of the representation and as a result of that, they suffered a loss. Here I cannot see any evidence that any of those four elements were satisfied. In particular, Mr B has not set out in any level of detail what the representations made to him turned out to be untrue. And, importantly, I have seen no evidence of the Supplier knowingly or recklessly saying something it knew to be untrue.

For the reasons above and in my provisional decision, I see no reason why it would be fair to direct the Lender to pay Mr B compensation for any of the other reasons mentioned in PR's letter of complaint.

### **My final decision**

For the reasons set out above and in my provisional decision, I don't uphold Mr B's complaint about Mitsubishi HC Capital UK PLC, trading as Novuna Personal Finance declining to accept and pay Mr B's claim under section 75 of the CCA.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 10 April 2026.

Stefan Riedel  
**Ombudsman**