

The complaint

Mrs S complains that Mitsubishi HC Capital UK PLC trading as Novuna¹ ('Novuna') is liable to pay her compensation following a complaint made about a timeshare bought using credit provided by Novuna.

What happened

On 23 July 2012, whilst existing members of a timeshare arrangement, Mr and Mrs S bought membership of an asset-backed timeshare, the Fractional Property Owners Club ('FPOC') from a timeshare company (the 'Supplier'). The purchase was made using finance from Novuna, taken in Mrs S's sole name². She entered into a Fixed Sum Loan Agreement (the 'Credit Agreement') for £8,998. This Credit Agreement was paid off and cleared by Mrs S on 9 April 2013.

On 12 August 2019, via a professional representative, Mrs S complained to Novuna. In essence she complained that Novuna was party to an unfair credit relationship with her, under Section 140A of the Consumer Credit Act 1974 (the 'CCA'), and she also made a claim under Section 75 of the CCA. She said the Supplier made the following misrepresentations at the time of sale:

- Mr and Mrs S were told the only way they could exit their existing timeshare membership was to purchase FPOC membership. This was untrue.
- They were told the FPOC membership would have a guaranteed exit after 19 years. This was untrue.
- Mr and Mrs S were told the resorts were exclusive to members. This was untrue.

Mrs S said the credit relationship between herself and Novuna was rendered unfair, under Section 140A CCA, for the following reasons:

- They had been placed under undue pressure to make the purchase, and for her to take the associated Credit Agreement.
- The Supplier was paid undisclosed commission by Novuna.
- Mr and Mrs S paid £8,998 for the FPOC membership and it is not worth that amount in any way.
- No other choice of finance was made available to Mrs S at the time of sale.
- Novuna failed to carry out a sound and proper credit assessment.

Novuna did not accept Mrs S's claim under Section 75, nor did they uphold her complaint under Section 140A.

¹ At the time the Credit Agreement was arranged, Mitsubishi HC Capital UK PLC was trading as 'Hitachi'. However as it is now known as 'Novuna' I shall refer to 'Novuna' throughout.

² The Credit Agreement was taken out by Mrs S in her maiden name, but as the complaint has been brought by her in her married name, I shall refer to Mrs S throughout.

Mrs S referred her complaint to our Service. Her complaint was in two parts. She complained that her credit relationship with Novuna was unfair, under Section 140A of the CCA, and secondly, that Novuna was unfair and unreasonable in refusing to accept her claim under Section 75 of the CCA.

Having considered everything, our Investigator thought that both Mrs S's complaint under Section 140A of the CCA and her claim under Section 75 were made too late under the Limitation Act 1980 (the 'LA').

Mrs S did not agree with this and asked for her complaint to be referred to an Ombudsman for a decision.

The Investigator carried out a second assessment of Mrs S's complaints, and having done so thought that Mrs S's complaint - that Novuna was party to an unfair credit relationship with her - had been made too late under the rules by which we operate, so was not in our jurisdiction. She explained that the Financial Conduct Authority's (FCA) Handbook required complaints to be made within six years of the event complained about, or if later, three years from when the complainant was aware, or ought reasonably to have become aware of cause to complain, unless exceptional circumstances applied.

And in relation to Mrs S's complaint about Novuna's handling of her claim under Section 75 of the CCA, she thought Novuna was not unfair or unreasonable in rejecting her claim as it would have had a defence to it under the LA.

As no agreement on either the matter of our Service's jurisdiction to consider the entirety of her complaint, nor their merits could be reached, the matter has been passed to me.

This decision only considers the merits of Mrs S's complaint about the way Novuna handled her claim under Section 75 of the CCA. I have dealt with whether our Service has jurisdiction to consider Mrs S's complaint that the credit relationship between herself and Novuna was unfair to her under Section 140A of the CCA, in a separate decision.

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.

In this part of Mrs S's complaint, she is alleging that Novuna was unfair and unreasonable in refusing to allow her claim under Section 75 of the CCA. She says Novuna ought to have allowed it as there were misrepresentations made by the Supplier at the time of sale, and these misrepresentations induced her and Mr S into making the purchase.

The LA imposes time limits for people to start legal proceedings – and there are different time limits for different types of claims. Essentially, this means that if someone waits too long to make a claim, the court will usually say it's 'time-barred'. For this reason, if a consumer makes a claim after the relevant time-limit has expired, we would usually say it was fair for the creditor to rely on the LA to decline the claim.

A claim under Section 75 is a "like" claim against the creditor. It essentially mirrors the claim a consumer could make against the Supplier. The limitation period to make such a claim against Novuna for alleged misrepresentations by the Supplier expires six years from the date on which Mrs S had everything she needed to make such a claim.

As the letter of complaint to Novuna makes clear, Mr and Mrs S entered into the purchase of the timeshare on 23 July 2012 based on the alleged misrepresentations of the Supplier,

which she says they relied on. And as the credit arrangement from Novuna was used to help finance the purchase, it was when Mrs S entered into the Credit Agreement that she suffered a loss – which means it was at that time that she had everything she needed to make a claim.

Mrs S first notified Novuna of her claim for alleged misrepresentations by the Supplier on 12 August 2019. As that was more than 6 years after she entered into the Credit Agreement and related timeshare agreement, I don't think it would have been unfair or unreasonable of Novuna to rely on the LA to decline Mrs S's claim.

My final decision

I do not uphold this complaint against Mitsubishi HC Capital UK PLC trading as Novuna.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S to accept or reject my decision before 30 July 2024.

Chris Riggs
Ombudsman