DRN-4443930

The complaint

Mrs P's complaint is, in essence, that Mitsubishi HC Capital UK Plc, trading as Novuna Consumer Finance (the 'Lender') acted unfairly and unreasonably under the Consumer Credit Act 1974 (as amended) (the 'CCA').

Background to the complaint

Mrs P, along with her partner Mr P, purchased membership of a timeshare (the 'Fractional Club') from a timeshare provider (the 'Supplier') on 1 August 2013 (the 'Time of Sale'). They entered into an agreement with the Supplier to buy 747 fractional points at a cost of £11,451 (the 'Purchase Agreement').

Fractional Club membership was asset backed – which meant it gave Mrs and Mr P more than just holiday rights. It also included a share in the net sale proceeds of a property named on their Purchase Agreement (the 'Allocated Property') after their membership term ends.

Mrs P paid for their Fractional Club membership by taking finance of £11,950 from the Lender (the 'Credit Agreement'), of which £499 went towards the membership fees for the year 2013. As the loan was taken in Mrs P's sole name, she is the eligible complainant and, as such, I will mainly refer to her throughout my decision.

Mrs P – using a professional representative (the 'PR') – wrote to the Lender on 26 October 2018 (the 'Letter of Complaint') to complain about the events that happened at the Time of Sale. The PR says:

"Our clients were members of [the Supplier's] Points system. At first our clients were happy with [the Supplier] but with the ever increasing maintenance fees and increasing lack of availability when and where they wanted to holiday. The main problem was that the points were until 2069, and as their family did not want them they tried to sell their points. Unfortunately, this was impossible and so they approached [the Supplier] when on holiday in Tenerife in 2012 (sic). *They were told by a [Supplier] representative that the only way to get out of Points was to buy into [the Supplier's] Fractional Timeshare.*

This gave them an option to sell the fractional in 19 years and get a return on their money. They were so desperate to find a solution and also, the fact that [the Supplier] told them that if, for whatever reason they passed away at least then their children would get a return on the 19th year, so it acted like a pension fund for them or an inheritance for their children. They agreed to go ahead and bought two weeks at a nett cost of £11,950 which also gave them 747 Fractional Points instead of 400 points that they had before.

Our clients have since found out that firstly, it is illegal to buy Timeshare under the new Timeshare Act of 2012 as an investment and, looking at the paperwork, it states in the contract that they will only sell Fractions if the client buys into a Freehold Property with [the Supplier.]

[The Supplier] deny selling this fractional as an investment … and say the clients only bought for their holidays.

So why would a client spend £11,950 (after trade in) buying only 347 amount of points it does not make sense (sic).

To add insult to injury, they discovered they could have simply handed the Points back to [the Supplier] and been out of the maintenance trap. They are very angry and believe they have been totally mis-sold.

Also, in trying to use their holidays, they are finding it extremely difficult to book holidays now as there is hardly any availability due to [the Supplier] being advertised on the internet e.g [third-party website] at a much reduced rate than [the Supplier] members are paying in maintenance fees. They also feel that this situation will only worsen, in view of the very extensive television advertising from [the Supplier]. They feel very let down by the lies which they were subjected to and are, therefore, claim a full refund under Section 75/ section 75A of the Consumer Credit Act of 1974 as this product was definitely mis-sold to them.

We also enclose copies of adverse internet publicity re this Company."

The Lender dealt with Mrs P's concerns as a complaint and issued its final response letter on 17 October 2022, saying that it thought the claim under Section 75 of the CCA was raised too late.

Mrs P then referred the complaint to the Financial Ombudsman Service. It was assessed by an Investigator who, having considered the information on file, rejected the complaint on its merits.

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

I set out my thoughts in a provisional decision (the 'PD'). In short, I agreed with the Investigator but wanted to give both parties an opportunity to consider what I said, and provide any further evidence and arguments, before I set out my final decision. I began by setting out the legal and regulatory context and what I considered to be good industry practice, as follows:

"***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.

I will refer to and set out several regulatory requirements, legal concepts and guidance in this decision, but I am satisfied that of particular relevance to this complaint is:

- *The CCA (including Section 75, 75A and Sections 140A-140C).*
- *The Limitation Act 1980 (the 'LA').*
- *The law on misrepresentation.*
- *The Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010 (the 'Timeshare Regulations').*
- *Case law on Section 140A of the CCA – including, in particular:*

    - *The Supreme Court's judgment in Plevin v Paragon Personal Finance Ltd [2014] UKSC 61 ('Plevin') (which remains the leading case in this area).*

- *Scotland v British Credit Trust [2014] EWCA Civ 790 ('Scotland and Reast')*
- *Patel v Patel [2009] EWHC 3264 (QB) ('Patel').*
- *The Supreme Court's judgment in Smith v Royal Bank of Scotland Plc [2023] UKSC 34 ('Smith').*
- *Carney v NM Rothschild & Sons Ltd [2018] EWHC 958 ('Carney').*
- *Kerrigan v Elevate Credit International Ltd [2020] EWHC 2169 (Comm) ('Kerrigan').*
- *R (on the application of Shawbrook Bank Ltd) v Financial Ombudsman Service Ltd and 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').*

Good industry practice – the RDO Code

The Timeshare Regulations provided a regulatory framework. But as the parties to this complaint already know, I am also required to take into account, when appropriate, what I consider to have been good industry practice at the relevant time – which, in this complaint, includes the Resort Development Organisation's Code of Conduct dated 1 January 2010 (the 'RDO Code')."

I then set out my provisional findings, as follows:

"***My provisional findings***

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

And having done that, I do not currently think this complaint should be upheld.

But 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.

What is more, I have made my decision on the balance of probabilities – which means I have based it on what I think is more likely than not to have happened given the available evidence and the wider circumstances.

I would also like to set out my thoughts on the information provided to me by the PR during the course of this complaint.

The Investigator requested a copy of Mrs P's testimony from the PR prior to issuing her findings. In response, the PR provided what it says is a copy of notes "taken from our interview with [Mrs P] in her home" (the 'Notes'). I've summarised the Notes as follows:

- *Mrs P met with an "elite specialist team for sales of the Fractional Club membership, highly trained in the selling of the Fractional Investment to existing members of [the Supplier]."*
- *Mrs P was pressured for several hours.*
- *Mrs P was told that her current ownership was in perpetuity and no longer in demand.*
- *Mrs P's annual maintenance fees were in the "region of 900 GBP", and she was advised it would remain within that bracket.*
- *Mrs P would not have purchased the product if it hadn't been sold to her as an investment.*

The PR says it interviewed Mrs P at her home and that it produced the Notes – and I presume, the Letter of Complaint – following that interview. However, a letter of complaint (or claim) is also not evidence, especially when, as here, it contains bare allegations or a mere summary of the consumer's allegations. And I'm not persuaded that the Notes reflect Mrs P's memories of the events at the Time of Sale, as I can't see any evidence to show me when the notes were created, or that Mrs P had any input into what they say. I will go into more detail on this point below.

Direct testimony from the consumer, in full and in their own words, is important in a case like this. It allows the decision-maker to assess credibility and consistency, to know precisely what was supposedly said, and to understand the context in which it was supposedly said. Here, that simply isn't possible. It's also important that the decision-maker can see that the Letter of Complaint genuinely reflects the consumer's testimony. Again, that simply isn't possible in this case.

With all this considered, I'm unable to place much, if any, evidentiary weight on the Letter of Complaint or the Notes. So, I have relied on the paperwork that's been provided from the Time of Sale, and the particular circumstances of the case.

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

The CCA introduced a regime of connected lender liability under Section 75 that affords consumers ("debtors") a right of recourse against lenders that provide the finance for the acquisition of goods or services from third-party merchants ("suppliers") in the event that there is an actionable misrepresentation and/or breach of contract by the supplier.

In short, a claim against the Lender under Section 75 essentially mirrors the claim Mrs P could make against the Supplier.

Certain conditions must be met if the protection afforded to consumers is engaged, including, for instance, the cash price of the purchase and the nature of the arrangements between the parties involved in the transaction. The Lender does not dispute that the relevant conditions are met in this complaint. And as I'm satisfied that Section 75 applies, if I find that the Supplier is liable for having misrepresented something to Mrs P at the Time of Sale, the Lender is also liable.

The Lender says that the complaint was raised too late according to the time limits set out in the LA. It says that Mrs P needed to bring her claim by 1 August 2019, and that she didn't raise it until after that date. But I can see that the PR's Letter of Complaint is dated 26 October 2018, and this is confirmed within the Lender's own final response letter. So, I think Mrs P did raise her claims and complaint in time, and I have gone on to consider the complaint on that basis.

This part of the complaint was made by the PR exactly as I set out at the start of this decision. While I recognise that Mrs P has concerns about the way in which the Timeshare membership was sold to her and Mr P, she hasn't persuaded me that there was an actionable misrepresentation by the Supplier at the Time of Sale for any of the reasons she alleges. I will explain my reasons for making this finding.

As I've said, the Letter of Complaint does not offer any evidence of what happened at the Time of Sale. It provides no colour or context to support the alleged misrepresentations, and indeed the evidence provided by the Supplier – and by the PR itself – directly contradicts what is set out in the Letter of Complaint.

For example, the PR says that Mrs P held a points-based membership with the Supplier prior to the Time of Sale. It says Mrs P was told that they only way she could only get out of that membership and the associated liabilities was to buy the Fractional Club membership. But this is simply not supported by the contemporaneous evidence such as the Purchase Agreement, which does not mention the trade in of any other timeshare product. And the Supplier says Mrs P never owned a points-based membership and the Fractional Club membership was the first (and only) purchase she made with it. So, I don't think it's likely that this was something the Supplier would have told Mrs P at the Time of Sale.

The PR says the Supplier advised Mrs P that her annual maintenance fee would remain in the region of £900. I am unsure why it would have said this when Mrs P's contract states that the fee was £499 for the year 2013. And I have seen copies of notice letters sent by the Supplier to Mrs P and Mr P concerning the outstanding management charges for 2015 and 2017 which were for amounts of £660.08 and £668.14 respectively.

What's more, as there's nothing else on file that persuades me there were any false statements of existing fact made to Mrs P by the Supplier at the Time of Sale, I do not think there was an actionable misrepresentation by the Supplier for the reasons she alleges.

For these reasons, therefore, I do not think the Lender is liable to pay Mrs P any compensation for the alleged misrepresentations of the Supplier. And with that being the case, I do not think the Lender acted unfairly or unreasonably when it dealt with the Section 75 claim in question.

Section 75 of the CCA: the Supplier's breach of contract

I've already summarised how Section 75 of the CCA works and why it gives Mrs P a right of recourse against the Lender. So, it isn't necessary to repeat that here other than to say that, if I find that the Supplier is liable for having breached the Purchase Agreement, the Lender is also liable.

The PR has raised the claim under both Section 75 and Section 75 of the CCA.

Section 75A CCA makes further provision for a creditor to be liable for breaches by the Supplier, in the event that certain conditions are met. One of these conditions is that the cost of the goods or service is over £30,000. As Mrs P's Purchase Agreement was valued at less than that amount, I think the PR has made an error here. The relevant provision is s.75 of the CCA, not s.75A of the CCA, so I have considered if there has been a breach of contract with this in mind.

The PR says that Mrs P was "finding it extremely difficult to book holidays now". So, I have considered whether the Supplier might have breached the contract for this or any other reason. I appreciate Mrs P may not have always been able to secure her first choice of holiday dates or locations, but I'm not persuaded the Supplier would have told her they she was guaranteed availability at any time or any location. And I have seen correspondence from June 2016 showing Mrs P had instructed a different representative to relinquish the Fractional Club membership. And I can see the Supplier chased Mrs P for unpaid maintenance fees for the year of 2017. So, it's not surprising that Mrs P found it difficult to book holidays when she had stopped paying the maintenance fees and had written to the Supplier to relinquish her membership.

In any case, given the lack of evidence to support this allegation, I am not persuaded that there has been a breach of contract here which warrants compensation.

Overall, therefore, from the evidence I have seen to date, I do not think the Lender is liable to pay Mrs P 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 when it dealt with the Section 75 claim in question.

Section 140A of the CCA: did the Lender participate in an unfair credit relationship?

I have already explained why I am not persuaded that Mrs P had a successful claim under Section 75 of the CCA. But, the PR also says the Fractional Club membership was sold to Mrs P as an investment when it was not supposed to be as it says:

"This gave them an option to sell the fractional in 19 years and get a return on their money."

The Lender does not dispute, and I am satisfied, that Mrs P's Fractional Club membership met the definition of a "timeshare contract" and was a "regulated contract" for the purposes of the Timeshare Regulations.

Regulation 14(3) of the Timeshare Regulations prohibited the Supplier from marketing or selling membership of the Fractional Club as an investment. This is what the provision said at the Time of Sale:

"A trader must not market or sell a proposed timeshare contract or long-term holiday product contract as an investment if the proposed contract would be a regulated contract."

But the PR says that the Supplier did exactly that at the Time of Sale as the PR says Mrs P was told she could expect to make a profit. So, for completeness, that is what I have considered here.

However, as a possible breach of Regulation 14(3) does not fall neatly into a claim under Sections 75 or 75A of the CCA, I must turn to another provision of the CCA if I am to consider this aspect of the complaint and arrive at a fair and reasonable outcome. And that provision is Section 140A.

Under Section 140A of the CCA, a debtor-creditor relationship can be found to have been or be unfair to the debtor because of one or more of the following: the terms of the credit agreement itself; how the creditor exercised or enforced its rights under the agreement; and any other thing done (or not done) by, or on behalf of, the creditor (either before or after the making of the agreement or any related agreement) (s.140A(1) CCA). Such a finding may also be based on the terms of any related agreement (which here, includes the Purchase Agreement) and, when combined with Section 56 of the CCA, on anything done or not done by the supplier on the creditor's behalf before the making of the credit agreement or any related agreement.

Section 56 plays an important role in the CCA because it defines the terms "antecedent negotiations" and "negotiator". As a result, it provides a foundation for a number of provisions that follow it. But it also creates a statutory agency in particular circumstances. And while Section 56(1) sets out three of them, the most relevant to this complaint are negotiations conducted by the supplier in relation to a transaction financed or proposed to be financed by a debtor-creditor-supplier agreement.

A debtor-creditor-supplier agreement is defined by Section 12(b) of the CCA as "a restricted-use credit agreement which falls within section 11(1)(b) and is made by the creditor under pre-existing arrangements, or in contemplation of future arrangements, between himself and the supplier […]". And Section 11(1)(b) of the CCA says that a restricted-use credit agreement is a regulated credit agreement used to "finance a transaction between the

debtor and a person (the 'supplier') other than the creditor […] and "restricted-use credit" shall be construed accordingly."

The Lender doesn't dispute that there was a pre-existing arrangement between it and the Supplier. So, the negotiations conducted by the Supplier during the sale of Mrs P's membership of the Fractional Club were conducted in relation to a transaction financed or proposed to be financed by a debtor-creditor-supplier agreement as defined by Section 12(b). That made them antecedent negotiations under Section 56(1)(c) – which, in turn, meant that they were conducted by the Supplier as an agent for the Lender as per Section 56(2). And such antecedent negotiations were "any other thing done (or not done) by, or on behalf of, the creditor" under s.140(1)(c) CCA.

Antecedent negotiations under Section 56 cover both the acts and omissions of the Supplier, as Lord Sumption made clear in Plevin, at paragraph 31:

"[Section] 56 provides that [when] antecedent negotiations for a debtor-creditor-supplier agreement are conducted by a credit-broker or the supplier, the negotiations are "deemed to be conducted by the negotiator in the capacity of agent of the creditor as well as in his actual capacity". The result is that the debtor's statutory rights of withdrawal from prospective agreements, cancellation and rescission may arise on account of the conduct of the negotiator whether or not he was the creditor's agent.' […] Sections 56 and 140A(3) provide for a deemed agency, even in a case where there is no actual one. […] These provisions are there because without them the creditor's responsibility would be engaged only by its own acts or omissions or those of its agents."

And this was recognised by Mrs Justice Collins Rice in Shawbrook & BPF v FOS at paragraph 135:

"By virtue of the deemed agency provision of s.56, therefore, acts or omissions 'by or on behalf of' the bank within s.140A(1)(c) may include acts or omissions of the timeshare company in 'antecedent negotiations' with the consumer".

In the case of Scotland & Reast, the Court of Appeal said, at paragraph 56, that the effect of Section 56(2) of the CCA meant that "negotiations are deemed to have been conducted by the negotiator as agent for the creditor, and that is so irrespective of what the position would have been at common law" before going on to say the following in paragraph 74:

"[...] there is nothing in the wording of s.56(2) to suggest any legislative intent to limit its application so as to exclude s.140A. Moreover, the words in s.140A(1)(c) "any other thing done (or not done) by, or on behalf of, the creditor" are entirely apposite to include antecedent negotiations falling within the scope of s.56(1)(c) and which are deemed by s.56(2) to have been conducted by the supplier as agent of the creditor. Indeed the purpose of s.56(2) is to render the creditor responsible for such statements made by the negotiator and so it seems to me wholly consistent with the scheme of the Act that, where appropriate, *they should be taken into account in assessing whether the relationship between the creditor and the debtor is unfair."*[1]

So, the Supplier is deemed to be the Lender's statutory agent for the purpose of the pre-contractual negotiations.

However, an assessment of unfairness under Section 140A isn't limited to what happened immediately before or at the time a credit agreement and related agreement were entered into. The High Court held in Patel (which was recently approved by the Supreme Court in the

[1] The Court of Appeal's decision in *Scotland* was recently followed in *Smith*.

case of Smith), that determining whether or not the relationship complained of was unfair had to be made "having regard to the entirety of the relationship and all potentially relevant matters up to the time of making the determination" – which was the date of the trial in the case of an existing credit relationship or otherwise the date the credit relationship ended.

The breadth of the unfair relationship test under Section 140A, therefore, is stark. But it isn't a right afforded to a debtor simply because of a breach of a legal or equitable duty. As the Supreme Court said in Plevin (at paragraph 17):

"Section 140A […] does not impose any obligation and is not concerned with the question whether the creditor or anyone else is in breach of a duty. It is concerned with […] whether the creditor's relationship with the debtor was unfair."

Instead, it was said by the Supreme Court in Plevin that the protection afforded to debtors by Section 140A is the consequence of all of the relevant facts.

I have considered the entirety of the credit relationship between Mrs P and the Lender along with all of the circumstances of the complaint and I do not think the credit relationship between them was likely to have been rendered unfair for the purposes of Section 140A. When coming to that conclusion, and in carrying out my analysis, I have looked at all the evidence provided by both parties on what was likely to have been said and/or done at the Time of Sale.

I have then considered the impact of these on the fairness of the credit relationship between Mrs P and the Lender.

Although the PR has not correctly identified the Timeshare Regulations, or what these say, in effect it says that the Supplier breached Regulation 14(3) of the Timeshare Regulations. The term "investment" is not defined in the Timeshare Regulations. In Shawbrook & BPF v FOS, the parties agreed that, by reference to the decided authorities, "an investment is a transaction in which money or other property is laid out in the expectation or hope of financial gain or profit" at [56]. I will use the same definition.

Mrs P's share in the Allocated Property clearly, in my view, constituted an investment as it offered her and Mr P the prospect of a financial return – whether or not, like all investments, that was more than what they first put into it. But the fact that Fractional Club membership included an investment element did not, itself, transgress the prohibition in Regulation 14(3). That provision prohibits the marketing and selling of a timeshare contract as an investment. It doesn't prohibit the mere existence of an investment element in a timeshare contract or prohibit the marketing and selling of such a timeshare contract per se.

In other words, the Timeshare Regulations did not ban products such as the Fractional Club. They just regulated how such products were marketed and sold.

To conclude, therefore, that Fractional Club membership was marketed or sold to Mrs P as an investment in breach of Regulation 14(3), I have to be persuaded that it was more likely than not that the Supplier marketed and/or sold membership to her as an investment, i.e. told her or led her to believe that Fractional Club membership offered her the prospect of a financial gain (i.e., a profit) given the facts and circumstances of this complaint.

From the information presented to me, I can see the Supplier did make efforts to avoid specifically describing membership of the Fractional Club as an 'investment' or quantifying to prospective purchasers, such as Mrs P and Mr P, the financial value of their share in the net sales proceeds of the Allocated Property along with the investment considerations, risks and rewards attached to them.

For example, the Member's Declaration document says:

"We understand that the purchase of our Fraction is for the primary purpose of holidays and is not specifically for direct purposes of a trade in and that [the Supplier] makes no representation as to the future price or value of the Fraction."

And the "Information Statement" says:

"11. Investment Advice

The Vendor, any sales or marketing agent and the Manager and their related businesses (a) are not licensed investment advisors authorized by the Financial Services Authority to provide investment or financial advice; (b) all information has been obtained solely from their own experience as investors and is provided as general information only and as such it is not intended for use as a source of investment advice and (c) all purchasers are advised to obtain competent advice from legal, accounting and investment advisors to determine their own specific investment needs; (d) no warranty is given as to any future values or returns in respect of an Allocated Property."

With that said, I accept that it's possible that Fractional Club membership was marketed and sold to Mrs P and Mr P as an investment in breach of Regulation 14(3) given the difficulty the Supplier was likely to have had in presenting a share in the net sales proceeds of the Allocated Property as an important feature of Fractional Club membership without breaching the relevant prohibition.

However, I don't think it's necessary to make a finding on this point because, as I'll go on to explain, I'm not currently persuaded that would make a difference to Mrs P's complaint anyway.

<u>Was the credit relationship between the Lender and Mrs P rendered unfair?</u>

As the Supreme Court's judgment in Plevin makes clear, it does not automatically follow that regulatory breaches create unfairness for the purposes of Section 140A. Such breaches and their consequences (if there are any) must be considered in the round, rather than in a narrow or technical way.

I am also mindful of what HHJ Waksman QC (as he then was) and HHJ Worster had to say in Carney and Kerrigan (respectively) on causation.

In Carney, HHJ Waksman QC said the following in paragraph 51:

"[…] In cases of wrong advice and misrepresentation, it would be odd if any relief could be considered if they did not have at least some material impact on the debtor when deciding whether or not to enter the agreement. […] in a case like the one before me, if in fact the debtors would have entered into the agreement in any event, this must surely count against a finding of unfair relationship under s140A. […]"

And in Kerrigan, HHJ Worster said this in paragraphs 213 and 214:

"[…] The terms of section 140A(1) CCA do not impose a requirement of "causation" in the sense that the debtor must show that a breach caused a loss for an award of substantial damages to be made. The focus is on the unfairness of the relationship, and the court's approach to the granting of relief is informed by that, rather than by a demonstration that a

*particular act caused a particular loss. Section 140A(1) provides only that the court **may** make an order **if** it determines that the relationship is unfair to the debtor. […]*

[…] There is a link between (i) the failings of the creditor which lead to the unfairness in the relationship, (ii) the unfairness itself, and (iii) the relief. It is not to be analysed in the sort of linear terms which arise when considering causation proper. The court is to have regard to all the relevant circumstances when determining whether the relationship is unfair, and the same sort of approach applies when considering what relief is required to remedy that unfairness. […]"

So, it seems to me that, if I am to conclude that a breach of Regulation 14(3) led to a credit relationship between Mrs P and the Lender that was unfair to her and warranted relief as a result, whether the Supplier's breach of Regulation 14(3) which, having taken place during its antecedent negotiations with them, is covered by Section 56 of the CCA, falls within the notion of "any other thing done (or not done) by, or on behalf of, the creditor" for the purposes of 140(1)(c) of the CCA and deemed to be something done by the Lender) led her and Mr P to enter into the Purchase Agreement and her to enter the Credit Agreement is an important consideration.

On my reading of the evidence provided, I'm not persuaded that was what is more likely than not to have happened at the Time of Sale. I'll explain why.

As I've said before, there is simply no evidence about what happened at the Time of Sale which supports this allegation. The Letter of Complaint and the Notes frame the purchase of the Fractional Club membership in the context that it involved the trade-in of an existing timeshare that Mrs P wanted to exit. But as I've already explained, Mrs P was not an existing timeshare owner with the Supplier. The paperwork does not show that there was a trade-in of any other product as part of the purchase. So, I think it's very unlikely the Supplier would have told Mrs P that the Fractional Club membership would remedy a problem she had with her liability concerning another membership she held with it when there is no evidence that she was an existing member. And I struggle to understand why she would have been persuaded to make the purchase on that basis.

What's more, there is no evidence to suggest that Mrs P was motivated to purchase her Fractional Club membership at the Time of Sale because she was told she would make a profit upon the sale of the Allocated Property. Because of this, I just don't think that was likely to have been what happened.

Given that Mrs P and Mr P were at the Supplier's resort on a holiday, I think they were interested in taking holidays, and specifically, the type of holidays the Supplier could give them with the points they gained through the Purchase Agreement.

On balance, therefore, even if the Supplier had marketed or sold the Fractional Club membership as an investment in breach of Regulation 14(3) of the Timeshare Regulations, I am not persuaded that Mrs P's decision to purchase Fractional Club membership at the Time of Sale was motivated by the prospect of a financial gain (i.e., a profit). On the contrary, I think the evidence suggests she and Mr P would have pressed ahead with the purchase whether or not there had been a breach of Regulation 14(3). And for that reason, I do not think the credit relationship between Mrs P and the Lender was unfair to her even if the Supplier had breached Regulation 14(3).

My provisional decision

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 Mrs P's claims under Section 75,

and I am not persuaded that the Lender was party to a credit relationship with Mrs P under the Credit Agreement that was unfair to her for the purposes of Section 140A of the CCA. 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."

Responses to the PD

The Lender did not provide anything further for me to consider.

The PR replied on behalf of Mrs P. In summary, it says:

- The Supplier's sales agents presented the Fractional Club as a means to recover money, secure a return, and safeguard the family's financial return.
- Mrs and Mr P were clear in their statements made to the PR, both orally and in writing, that they only agreed to buy the Fractional Club as it was promised that it was an investment.
- It would defy common sense for consumers to pay nearly £12,000 only for a *"modest net gain in usage points"* unless other promises were central to the sale.
- The PR's note about the maintenance fee levels reflected what was represented verbally at the Time of Sale, not what the contract set out.
- Mrs P's complaint was not predicated on Mrs P's prior ownership with *this* timeshare supplier; instead, she was told that buying the Fractional Club membership *"was the only route out of unwanted perpetual timeshares*".
- Mrs P was not made aware of the alternative options to relinquish points without additional purchase.

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 everything again, I still reject Mrs P's complaint for the reasons I set out in the PD.

I will also deal with the matters raised by the PR in response. In doing so, I remind both parties that my role as an Ombudsman is not to respond to every point that has been made in response. Instead, it is to decide what is fair and reasonable in the circumstances of this specific complaint. So, while I have read the PR's response in full, my findings are confined to what I think are the most salient points.

In reading the PR's response to the PD, I'm struck by the fact that it refers to written statements by Mrs P and Mr P, but it has still not supplied me with any such statements. So, I repeat the point I made in the PD that there is simply no evidence from Mrs P to support any of the allegations raised by the PR in its Letter of Complaint or in its response to my PD. What's more, the PR has further contradicted itself in its response to such an extent that I find the submissions unreliable and difficult to place any weight upon.

For example, the PR says:

> *"The complaint is not predicated on ownership with this supplier; rather, the supplier's agents represented to [Mrs P and Mr P] that buying the fractional product was the only route out of unwanted perpetual timeshares, creating pressure and a false sense of necessity."*

But this simply does not marry up with what the PR has repeatedly said about Mrs P's interactions with the Supplier throughout this complaint. For example, its own Letter of Complaint begins:

> *"Our clients were members of [the Supplier's] Points system. At first our clients were happy with [the Supplier] …"*

So, clearly, the PR's Letter of Complaint *was* predicated on the basis that Mrs P was an existing member with the Supplier, but as I said in the PD, this is not true.

In any case, the PR has not given me any evidence to show that Mrs P was a member of another timeshare in perpetuity at the Time of Sale, either with the Supplier or a different timeshare provider, nor that the Supplier told her that purchasing the Fractional Club membership would be a solution to such a problem if it had existed.

The PR has contradicted itself again where it says that Mrs P only gained a modest number of points, and that she wasn't told of alternative ways to relinquish points. But Mrs P did not simply increase her points allocation at the Time of Sale, she became a new customer of the Supplier and as such, went from having no points to having 747 points. And so, I am unsure of why the PR thinks that Mrs P ought to have been told of alternative ways to relinquish points when she didn't own any prior to the sale.

So overall, as the PR has not provided me with any new testimony or evidence from Mrs P to support the allegations made about the events at the Time of Sale, and as I've not been persuaded by any of the PR's arguments in response to the PD, I see no reason to depart from my provisional findings, as outlined above.

My final decision

I don't uphold Mrs P's complaint against Mitsubishi HC Capital UK Plc trading as Novuna Consumer Finance.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs P to accept or reject my decision before 25 August 2025.

Andrew Anderson
Ombudsman