

## 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'), (2) deciding against paying claims under Section 75 of the CCA, (3) lending to him irresponsibly, (4) and providing a loan to pay for an Unregulated Collective Investment Scheme.

## What happened

Mr and Mrs A purchased membership of a timeshare (the 'Fractional Club') from a timeshare provider (the 'Supplier') on 25 May 2018 (the 'Time of Sale'). They entered into an agreement with the Supplier to buy 1,040 fractional points at a cost of £14,430 (the 'Purchase Agreement').

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

Mr and Mrs A paid for their Fractional Club membership by taking finance of £14,430 from the Lender in Mr A's name only (the 'Credit Agreement'). As such, only Mr A is eligible to complain about the Credit Agreement. So, in this decision I mostly refer to Mr A, but this can be taken to mean Mr and Mrs A where appropriate, such as when I am referring to their Fractional Club membership.

Mr A – using a professional representative (the 'PR') – wrote to the Lender on 6 September 2023 (the 'Letter of Complaint') to raise several 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 15 May 2024, rejecting it on every ground.

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

The Investigator thought that the Supplier had marketed and sold Fractional Club membership as an investment to Mr A at the Time of Sale in breach of Regulation 14(3) of the Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010 (the 'Timeshare Regulations'). And given the impact of that breach on his purchasing decision, the Investigator concluded that the credit relationship between the Lender and Mr A was rendered unfair to him for the purposes of section 140A of the CCA.

The Lender 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 no different to that shared in several hundred ombudsman decisions on very similar complaints. And with that being the case, it is not necessary to set it out 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.

I have decided that this complaint should be upheld because the Supplier breached Regulation 14(3) of the Timeshare Regulations by marketing and/or selling Fractional Club membership to Mr A as an investment, which, in the circumstances of this complaint, rendered the credit relationship between him and the Lender unfair to him for the purposes of Section 140A of the CCA.

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, while I recognise that there are several aspects to this complaint, it is not necessary to make formal findings on all of them because, even if one or more of those aspects ought to succeed, the redress I am awarding puts Mr A in the same or a better position than he would otherwise be in.

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

Having considered the entirety of the credit relationship between Mr A and the Lender along with all the circumstances of the complaint, I 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:

1. The Supplier's sales and marketing practices at the Time of Sale – which includes training material that I think is likely to be relevant to the sale;
2. The provision of information by the Supplier at the Time of Sale, including the contractual documentation and disclaimers made by the Supplier;
3. Evidence provided by both parties on what was likely to have been said and/or done at the Time of Sale; and
4. The inherent probabilities of the sale given its circumstances.

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

### **The Supplier's alleged breach of Regulation 14(3) of the Timeshare Regulations**

The Lender does not dispute, and I am satisfied, that Mr A'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 Fractional Club membership 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 Mr A has said that the Supplier did exactly that at the Time of Sale. In a statement provided to us on 13 November 2023<sup>1</sup>, Mr A says that:

*"When we bought it CLC had promised us we could in the future sell the timeshare ourselves or sell it to them and **make a good profit**, but they were never interested in helping us with that."*  
**(my emphasis)**

The PR has also provided a copy of a call note it made when speaking to Mr A on 3 May 2022. This noted that Mr and Mrs A, "*liked the idea of the investment*". And that one of his issues with Fractional Club membership was that "*no profit [was] made*".

The PR also provided a questionnaire completed by a timeshare advice company when Mr A spoke to them on 26 April 2022. This noted that Mr A, "*took out [the timeshare] as [it] sounded good – could have holidays + could sell & get profit at the end.*"

The term "investment" is not defined in the Timeshare Regulations. But for the purposes of this decision, and 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.

Mr A's share in the Allocated Property could constitute an investment as it offered him the prospect of a financial return – whether, like all investments, that was more than what he first put into it. But it is important to note at this stage that 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 Mr A 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 him as an investment, i.e. told him or led him to believe that Fractional Club membership offered him the prospect of a financial gain (i.e., a profit) given the facts and circumstances of *this* complaint.

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<sup>1</sup> This statement is undated, but was clearly written sometime during 2022, but later than March 2022 – given it says that "*in March of this year we failed to be able to make the payments*". March 2022 was the only missed payment shown on the loan statement provided.

There is evidence in this complaint that the Supplier made efforts to avoid specifically describing membership of the Fractional Club as an 'investment' or quantifying to prospective purchasers, such as Mr A, the financial value of his share in the net sales proceeds of the Allocated Property along with the investment considerations, risks and rewards attached to them. There were, for instance, disclaimers in the contemporaneous paperwork that state that Fractional Club membership was not sold to Mr A as an investment.

However, weighing up what happened in practice is, in my view, rarely as simple as looking at the contemporaneous paperwork. And for reasons I'll now come on to, given the facts and circumstances of this complaint, I think the Supplier is likely to have breached Regulation 14(3) of the Timeshare Regulations.

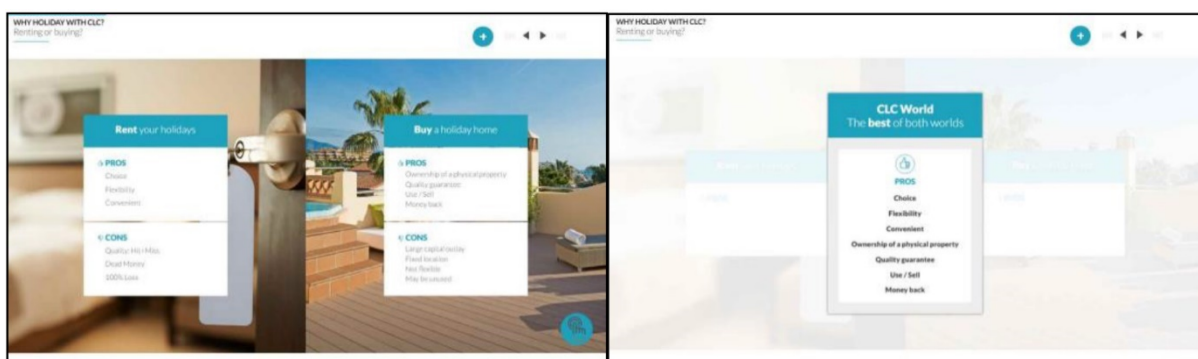
### How the Supplier marketed and sold the Fractional Club membership

During the Financial Ombudsman Service's work on complaints about the sale of timeshares, the Supplier provided information on how it sold membership of timeshares like Mr A's – which includes a document called the "Fractional Property Owners Club Fly Buy Manual 2017" (the '2017 Fractional Training Manual').

As I understand it, the 2017 Fractional Training Manual was used from November 2017 onwards during the sale of the Supplier's second version of the Fractional Property Owners Club (which I will continue to refer to as simply the Fractional Club) – which was the version Mr A appears to have purchased. It is not entirely clear whether he would have been shown the slides included in the Manual. But it seems to me to be reasonably indicative of:

- (1) the training the Supplier's sales representatives would have got before selling Mr A's Fractional Club membership; and
- (2) how the sales representatives would have framed the sale of Fractional Club membership to him.

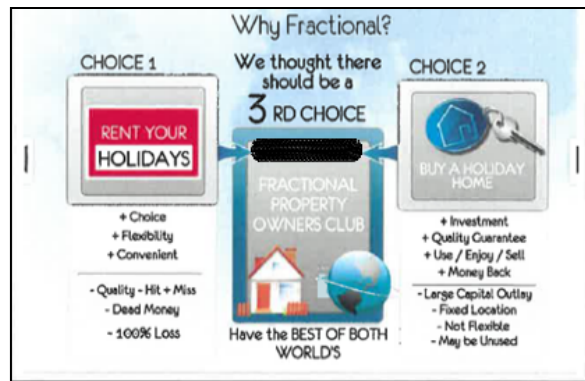
Having looked through the Manual, my attention is drawn first to page 19 (of 74) – which includes two slides called "Why holiday with [the Supplier]? Renting or buying?".



They were the first slides in the Manual that seem to set out any information about Fractional Club membership, albeit without expressly referring to the Fractional Club, because they suggest that sales representatives were likely to have made the point that holidaying with the Supplier combined the best of *renting holidays* and *buying a holiday home*, including, amongst other things, ownership of a physical property and money back – which were benefits that were only front and centre of Fractional Club membership.

From the off, therefore, it seems likely that sales representatives would have demonstrated that there were financial advantages to Fractional Club membership rather than being a member of a 'standard' timeshare.

Indeed, the slides above presented a very similar prospect to that presented in a slide used in one of the Supplier's earlier training manuals that was used to help it sell the first version of Fractional Property Owners Club:



All three indicate that sales representatives would have taken prospective members through three holidaying options along with their positives and negatives:

- (1) "Rent Your Holidays"
- (2) "Buy a Holiday Home"
- (3) The "Best of Both Worlds"

I acknowledge that the slides incorporated into the 2017 Fractional Training Manual don't include express reference to the 'investment' benefit of Fractional Club membership. But they allude to much the same concept.

One of those advantages referred to in the slides on page 19 of the 2017 Fractional Training Manual is the "ownership of a physical property". And as an owner's equity in their property is built over time as the value of the asset increases relative to the size of any mortgage secured against it, this particular advantage of Fractional Club membership was portrayed in terms that played on the opportunity ownership gave prospective members of the Fractional Club to accumulate wealth in a similar way.

When the Manual moved on to describe how membership of the Fractional Club worked between pages 26 and 36, one of the major benefits of Fractional Club membership was described on page 35 as:

*"A major benefit is that after 19 years of fantastic holidays, the property in which you own a fraction is sold and you will receive your share of the sale proceeds according to the number of fractions owned."*

And on page 36 there were notes that encouraged sales representatives to summarise this benefit in the following way:

*"So really FPOC equals a passport to fantastic holidays for 19 years with a return at the end of that period. When was the last time you went on holiday and got some money back?"*

After discussing some of the other aspects of membership, such as the different resorts available to members, page 53 of the Manual indicates that sales representatives would have moved onto a cost comparison between “renting” holidays and “owning” them. Sales representatives were encouraged to tell prospective members how much they would spend over 19 years (i.e., the length of Fractional Club membership) on holidays with “no return” in contrast to spending the same amount of money as Fractional Club members – thus demonstrating the financial advantages of membership.

Page 53 included the following slides and accompanying notes:



*“We aren’t only talking about 10 years, we are talking about 19 years. So in actual fact, with the travel agent over 19 years you would have spend over £... with no return.*

*However, with [the Supplier] you would still have spent the same £... because once your fraction is paid for, the remaining years of holiday accommodation is taken care of.*

*We also agreed that you would get nothing back from the travel agent at the end of this holiday period. Remember with your fraction at the end of the 19 year period, you will get some money back from the sale, so even if you only say £5,000, it would still be more than you would get renting your holidays from a travel agent wouldn’t it?”*

I acknowledge that the slides above set out a “return” that is less than the total cost of the holidays and the “initial outlay”. But that was just an example and, given the way in which it was positioned in the 2017 Fractional Training Manual, the language did leave open the possibility that the return could be equal to if not more than the initial outlay. Furthermore, the slides above represent Fractional Club membership as:

1. The right to receive holiday rights for 19 years whose market value significantly exceeds the costs to a Fractional Club member; plus
2. A significant financial return at the end of the membership term.

And to consumers (like Mr A) who were looking to buy holidays anyway, the comparison the slides make between the costs of Fractional Club membership and the higher cost of buying holidays on the open market was likely to have suggested to them that the financial return was in fact an overall profit.

What’s more, I think the Supplier’s sales representatives were encouraged to make prospective Fractional Club members (like Mr A) consider the advantages of owning something and view membership as a way of generating a return, rather than simply paying for holidays in the usual way. That was likely to have been reinforced throughout the Supplier’s sales presentations by describing membership as a form of property ownership referring to the prospect of a “return”. And with that being the case, I think the language used

during the Supplier's sales presentations was likely to have been consistent with the idea that Fractional Club membership was an investment.

I acknowledge that there may not have been a comparison between the expected level of financial return and the purchase price of Fractional Club membership. However, if I were to only concern myself with express efforts to quantify to Mr A the financial value of the proprietary interest he was offered, I think that would involve taking too narrow a view of the prohibition against marketing and selling timeshares as an investment in Regulation 14(3).

When the Government consulted on the implementation of the Timeshare Regulations, it discussed what marketing or selling a timeshare as an investment might look like – saying that *'[a] trader must not market or sell a timeshare or [long-term] holiday product as an investment. For example, there should not be any inference that the cost of the contract would be recoupable at a profit in the future (see regulation 14(3)).'*<sup>2</sup> And in my view that must have been correct because it would defeat the consumer-protection purpose of Regulation 14(3) if the concepts of marketing and selling a timeshare as an investment were interpreted too restrictively.

So, if a supplier *implied* to consumers that future financial returns (in the sense of possible profits) from a timeshare were a good reason to purchase it, I think its conduct was likely to have fallen foul of the prohibition against marketing or selling the product as an investment.

Given what I've already said about the Supplier's training material and the way in which I think it was likely to have framed the sale of Fractional membership to prospective members (including Mr A), and given what Mr A has said about what he was told at the Time of Sale (that he was told or given the impression that he could get a profit at the end, that he liked the idea of the investment, and that the Supplier had promised him he could sell the timeshare and make a good profit), I think it is more likely than not that the Supplier did, at the very least, imply to Mr A that future financial returns (in the sense of possible profits) from a Fractional Club membership were a good reason to purchase it.

So, overall, on the balance of probabilities, I think the Supplier's sales representative was likely to have led Mr A to believe that Fractional Club membership was an investment that may lead to a financial gain (i.e., a profit) in the future. And with that being the case, I do not find Mr A either implausible or hard to believe when he says that he was told that he was buying something that may well lead to a financial gain. On the contrary, given everything I have seen so far, I think that is likely to be what Mr A was led to believe by the Supplier at the relevant time. And for that reason, I think the Supplier breached Regulation 14(3) of the Timeshare Regulations.

### **Was the credit relationship between the Lender and the Consumer rendered unfair?**

Having found that the Supplier breached Regulation 14(3) of the Timeshare Regulations at the Time of Sale, I now need to consider what impact that breach had on the fairness of the credit relationship between Mr A and the Lender under the Credit Agreement and related Purchase Agreement as the case law on Section 140A makes it clear that regulatory breaches do not automatically create unfairness for the purposes of that provision. Such breaches and their consequences (if there are any) must be considered in the round, rather than in a narrow or technical way.

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<sup>2</sup> The Department for Business Innovation & Skills "Consultation on Implementation of EU Directive 2008/122/EC on Timeshare, Long-Term Holiday Products, Resale and Exchange Contracts (July 2010)". <https://assets.publishing.service.gov.uk/media/5a78d54ded915d0422065b2a/10-500-consultation-directive-timeshare-holiday.pdf>

Indeed, it seems to me that, if I am to conclude that a breach of Regulation 14(3) led to a credit relationship between Mr A and the Lender that was unfair to him and warranted relief as a result, it is important to consider whether the Supplier's breach of Regulation 14(3) led him to enter into the Purchase Agreement and the Credit Agreement.

On my reading of Mr A's evidence, the prospect of a financial gain from Fractional Club membership was an important and motivating factor when he decided to go ahead with his purchase. I say this because he has consistently indicated that he saw it as an investment and mentioned that he hoped or expected to make a profit from it. Bearing in mind he has also said that he was concerned about being able to afford Fractional Club membership, it seems unlikely to me that he would have gone ahead with the purchase if he did not see the possibility of making a profit in future – based on what the Supplier had told him.

That doesn't mean he was not interested in holidays. his own testimony demonstrates that he quite clearly was. And that is not surprising given the nature of the product at the centre of this complaint. But as Mr A says (plausibly in my view) that Fractional Club membership was marketed and sold to him at the Time of Sale as an investment (as defined above), on the balance of probabilities, I think his purchase was motivated by his share in the Allocated Property and the possibility of a profit, as that share was one of the defining features of membership that marked it apart from the more 'standard' type of timeshare available. And with that being the case, I think the Supplier's breach of Regulation 14(3) was material to the decision he ultimately made.

Mr A has not said or suggested, for example, that he would have pressed ahead with the purchase in question had the Supplier not led him to believe that Fractional Club membership was an appealing investment opportunity. And as he faced the prospect of borrowing and repaying a substantial sum of money while subjecting himself to long-term financial commitments, had he not been encouraged by the prospect of a financial gain from membership of the Fractional Club, I'm not persuaded that he would have pressed ahead with his purchase regardless.

I have considered the Lender's response to our Investigator's assessment, and its comments on the evidence provided by Mr A. It has concerns regarding:

- Mr A not specifying what sales material was shown to him which indicated Fractional Club membership was an investment.
- Mr A not explaining what conversations were had with the salesperson that led him to believe this was an investment proposition.
- Mr A not indicating that he thought he was buying an investment and would not have proceeded had he not thought that.

It seems to me that the Lender's concerns around Mr A's evidence are in essence that they lack some specific details that would make it easier to conclude there was a breach of Regulation 14(3). But I do not think the lack of such specific detail means that Mr A's evidence is not plausible or persuasive enough for me to uphold this complaint – given all the evidence available to me. Mr A has said that he had concerns about being able to afford Fractional Club membership, and it seems to me that the prospect of making a profit was an important factor in overcoming those concerns.

## Conclusion

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Given the facts and circumstances of this complaint, I think the Lender participated in and perpetuated an unfair credit relationship with Mr A under the Credit Agreement and related Purchase Agreement for the purposes of Section 140A. And with that being the case, taking everything into account, I think it is fair and reasonable that I uphold this complaint.

## Fair Compensation

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Having found that Mr A would not have agreed to purchase Fractional Club membership at the Time of Sale were it not for the breach of Regulation 14(3) of the Timeshare Regulations by the Supplier (as deemed agent for the Lender), and the impact of that breach meaning that, in my view, the relationship between the Lender and the Consumer was unfair under section 140A of the CCA, I think it would be fair and reasonable to put him back in the position he would have been in had he not purchased the Fractional Club membership (i.e., not entered into the Purchase Agreement), and therefore not entered into the Credit Agreement, provided Mr and Mrs A agree to assign to the Lender their Fractional Points or hold them on trust for the Lender if that can be achieved.

Here's what I think needs to be done to compensate Mr A with that being the case – whether or not a court would award such compensation:

- (1) The Lender should refund Mr A's repayments to it under the Credit Agreement, including any sums paid to settle the debt, and cancel any outstanding balance if there is one.
- (2) In addition to (1), the Lender should also refund the annual management charges Mr A paid as a result of Fractional Club membership.
- (3) The Lender can deduct:
  - i. The value of any promotional giveaways that Mr A used or took advantage of; and
  - ii. The market value of the holidays\* Mr A took using his Fractional Points.(I'll refer to the output of steps 1 to 3 as the 'Net Repayments' hereafter)
- (4) Simple interest\*\* at 8% per annum should be added to each of the Net Repayments from the date each one was made until the date the Lender settles this complaint.
- (5) The Lender should remove any adverse information recorded on Mr A's credit file in connection with the Credit Agreement reported within six years of this decision.
- (6) If Mr and Mrs A's Fractional Club membership is still in place at the time of this decision, as long as they both agree to hold the benefit of their interest in the Allocated Property for the Lender (or assign it to the Lender if that can be achieved), the Lender must indemnify Mr A against all ongoing liabilities as a result of his Fractional Club membership.

\*I recognise that it can be difficult to reasonably and reliably determine the market value of holidays when they were taken a long time ago and might not have been available on the open market. So, if it isn't practical or possible to determine the market value of the holidays Mr A took using his Fractional Points, deducting the relevant annual management charges (that correspond to the year(s) in which one or more holidays were taken) payable under the Purchase Agreement seems to me to be a practical and proportionate alternative in order to reasonably reflect his usage.

\*\*HM Revenue & Customs may require the Lender to take off tax from this interest. If that's the case, the Lender must give the consumer a certificate showing how much tax it's taken off if they ask for one.

### **My final decision**

For the reasons I've explained, I've decided to uphold this complaint. I direct Mitsubishi HC Capital UK Plc to pay fair compensation to Mr A as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 17 December 2025.

Phillip Lai-Fang  
**Ombudsman**