

## The complaint

Mr P's complaint is, in essence, that Mitsubishi HC Capital UK PLC trading as Novuna Consumer Finance ('Novuna') 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.

## Background to the complaint

Mr P, together with his wife Mrs P, purchased membership of a timeshare (the 'Fractional Club') from a timeshare provider (the 'Supplier') on 26 May 2019 (the 'Time of Sale'). They entered into an agreement with the Supplier to buy 1,750 fractional points at a cost of £27,689 (the 'Purchase Agreement').

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

Mr and Mrs P paid for their Fractional Club membership by taking finance of £23,294 from Novuna in Mr P's name (the 'Credit Agreement').

As the Credit Agreement is in Mr P's sole name, it is only he who is eligible to refer this complaint to us. With that in mind, and for ease, I will refer predominantly to Mr P only from here on – even where he and Mrs P may have been acting jointly, or the matter might otherwise apply to Mrs P in some way.

Mr P – using a professional representative (the 'PR') – wrote to Novuna on 1 June 2023 (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. Novuna dealt with Mr P's concerns as a complaint and issued its final response letter on 17 September 2024, rejecting it on every ground.

Mr P 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 P 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 Novuna and Mr P was rendered unfair to him for the purposes of section 140A of the CCA.

Novuna 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. But if either side would like me to confirm what I think that context is, they can let me know in response to this provisional 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.

Having done that, I currently think 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 P as an investment, which, in the circumstances of this complaint, rendered the credit relationship between him and Novuna 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 a number of 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 currently proposing puts Mr P in the same or a better position than he would otherwise be in.

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

Having considered the entirety of the credit relationship between Mr P and Novuna along with all of 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 P and Novuna.

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

Novuna does not dispute, and I am satisfied, that Mr 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 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 P says that the Supplier did exactly that at the Time of Sale – saying, in summary, that he was told by the Supplier that Fractional Club membership was the type of investment that would only increase in value.

The term “investment” is not defined in the Timeshare Regulations. But for the purposes of this provisional decision, an 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 P’s share in the Allocated Property clearly constituted an investment as it offered him the prospect of a financial return – whether or not, 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 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 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.

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 P, 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 P 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

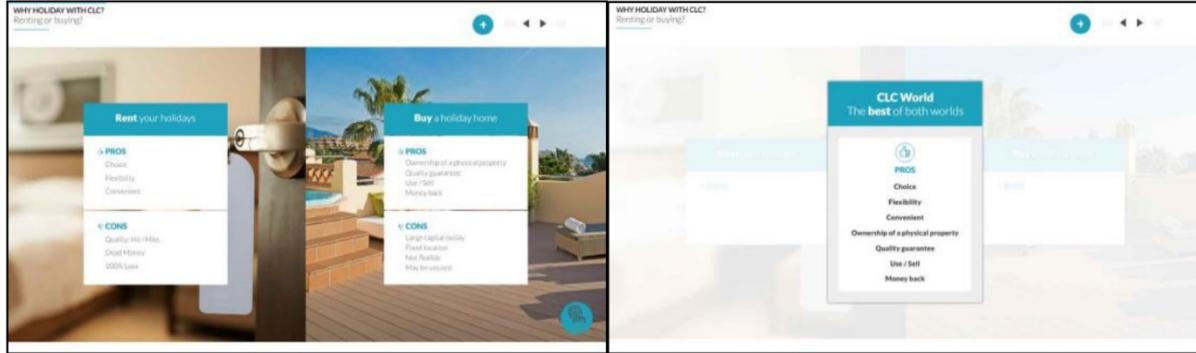
During the course of the Financial Ombudsman Service’s work on complaints about the sale of timeshares, the Supplier provided information on how it sold membership of timeshares like Mr P – which includes a document called the “Fractional Property Owners Club Fly Buy Manual 2017” (the ‘2017 Fractional 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 P 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 P 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 seems to me 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 to Miss I and Mr S that holidaying with the Supplier combined the best of (1) and (2), 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:

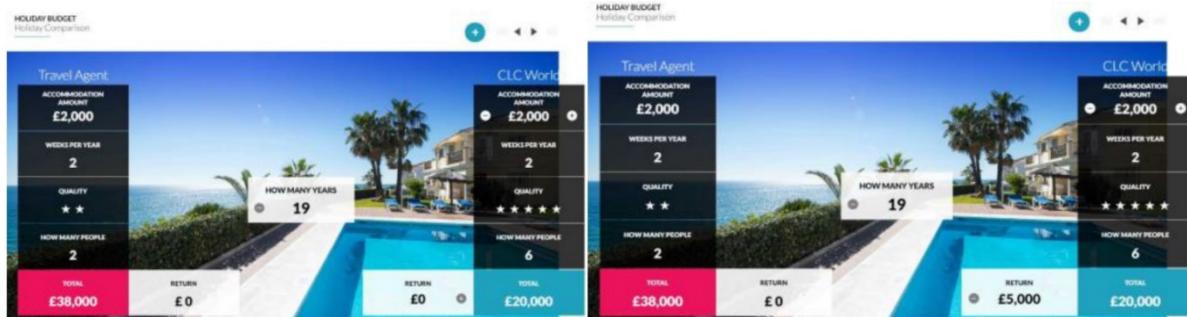
*"A major benefit is that after 19 years of fantastic holidays, the property in which you own a fraction is sold and you will receive your share of the sale proceeds according to the number of fractions owned."*

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 10 years, we are talking about 19 years. So in actual fact, with the travel agent over 19 years you would have spent 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 P) 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 him 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 P) 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 P 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>1</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.

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<sup>1</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>

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 P), I think it is more likely than not that the Supplier did, at the very least, imply that future financial returns (in the sense of possible profits) from a Fractional Membership were a good reason to purchase it – which, broadly speaking, is consistent with Mr P's recollections of the sale.

So, overall, on the balance of probabilities, I think the Supplier's sales representative was likely to have led Mr P 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 him either implausible or hard to believe when he says that he was told that he was buying shares in property that, being an investment, 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 P 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.

I've noted that in response to our Investigator's view, Novuna has raised that the PR referred to different training materials in making the case that the Supplier had likely marketed or sold the Fractional Club membership as an investment to Mr P. This does not, ultimately, affect my view of things – given that, for the reasons I've explained – I think the materials that would've been used by the Supplier at the Time of Sale would, most likely, mean that the Supplier would have led Mr P to believe that Fractional Club membership was an investment that could lead to a financial gain.

#### Was the credit relationship between Novuna and Mr P 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 P and Novuna 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.

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

To help me decide this point, I've carefully considered what Mr P has said in the course of his complaint about how the membership was sold to him and his motivation for purchasing it. And on my reading of Mr P's testimony, 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. Within his statement and of relevance to the point at issue, he says:

*"[The Supplier] explained that the Fractional ownership would provide us with a share in a [Supplier] property and that when our contract ended, the property would be sold and we would receive a part of the selling price. They said we could not lose because we could enjoy years of holidays and then receive a financial return from the investment."*

*"We thought what a fantastic investment opportunity. We would be part owners of a luxury property which would be sold in years to come and we would gain financially... it was only costing us £276.53 per month in loan repayments. We were really impressed with the deal. What an investment we both thought!"*

*We joined [the Supplier] because we were shown fantastic apartments and told we would own a share of property which would potentially yield profit. It all seemed like a fantastic investment opportunity; whilst enjoying luxury holiday accommodation."*

I find Mr P's statement to persuasively set out that the investment element of the Fractional Club membership was a material factor in his decision to purchase it. 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 P says (plausibly in my view) that Fractional Club membership was marketed and sold to him at the Time of Sale as something that offered him more than just holiday rights and that this was a factor in his decision to purchase it, 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 to them. 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 P 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.

In its response to our Investigator's assessment, Novuna highlighted that Mr P also referred to a subsequent presentation in which he was "*offered to buy actual real estate*" by the Supplier. It says that given his awareness of the Supplier's offering of "actual real estate", it cannot accept that he would consider his 4.51% share of the net sale proceeds of the Allocated Property as an investment. I do not agree with this argument. First and foremost, Mr P wasn't necessarily aware of this other offering at the Time of Sale, given that it came some time after he had already purchased the Fractional Club membership. Moreover, it simply does not follow that because another type of investment existed – one with very different costs, benefits, risks and rewards – that he could not be attracted by the investment potential of the deal at issue. And for the reasons I've explained, I think he was.

Finally, Novuna notes that Mr P had an existing interest in purchasing "full membership" – being an existing trial member – prior to the Time of Sale (and therefore, prior to any presentation by the Supplier that set out anything connected to an investment opportunity). So it argues that Mr P would always have proceeded with the purchase, given his existing interest in the holiday options on offer. I do not think Mr P's apparent interest in upgrading at some point in the future meant he would always have gone ahead with the purchase of Fractional Club membership. For example, he may not have thought Fractional Club membership represented value for money were it not for the possibility of a financial gain. That he decided to purchase Fractional Club membership – as opposed to a more 'standard' type of timeshare in keeping with his existing trial membership – was, in my view, influenced by the prospect of a financial gain from his share in the net sale proceeds of the Allocated Property.

## **Conclusion**

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Given the facts and circumstances of this complaint, I think Novuna participated in and perpetuated an unfair credit relationship with Mr P 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.

### **Putting things right**

Having found that Mr P 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 Novuna), and the impact of that breach meaning that, in my view, the relationship between Novuna 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 P – and Mrs P, given she is also named on the Purchase Agreement – agree to assign to Novuna their Fractional Points or hold them on trust for Novuna if that can be achieved.

Mr and Mrs P were trial members before purchasing Fractional Club membership. As I understand it, trial membership involved the purchase of a fixed number of week-long holidays that could be taken with the Supplier over a set period in return for a fixed price. The purpose of trial membership was to give prospective members of the Supplier's longer-term products a short-term experience of what it would be like to be a member of, for example, the Fractional Club. According to an extract from the Supplier's business plan, roughly half of trial members went on to become timeshare members.

If, after purchasing trial membership, a consumer went on to purchase membership of one of the Supplier's longer-term products, their trial membership was usually cancelled and traded in against the purchase price of their timeshare – which was what happened at the Time of Sale. Mr and Mrs P's trial membership was, therefore, a precursor to their Fractional Club membership. With that being the case, the trade-in value acted, in essence, as a deposit on this occasion and I think this ought to be reflected in my redress when remedying the unfairness I have found.

So, given all of the above, here's what I think needs to be done to compensate Mr P – whether or not a court would award such compensation:

- (1) Novuna should refund Mr P'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), Novuna should also refund:
  - i. The annual management charges Mr P paid as a result of Fractional Club membership.
  - ii. The trade-in value given to Mr and Mrs P's trial membership.
- (3) Novuna can deduct:
  - i. The value of any promotional giveaways that Mr and Mrs P used or took advantage of; and
  - ii. The market value of the holidays\* Mr and Mrs P took using their 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 Novuna settles this complaint.

- (5) Novuna should remove any adverse information recorded on Mr P's credit file in connection with the Credit Agreement reported within six years of this decision.
- (6) If Mr and Mrs P's Fractional Club membership is still in place at the time of this decision, as long as they agree to hold the benefit of their interest in the Allocated Property for Novuna (or assign it to Novuna if that can be achieved), Novuna must indemnify them against all ongoing liabilities as a result of their 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 and Mrs P took using their 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 their usage.

\*\*HM Revenue & Customs may require Novuna to take off tax from this interest. If that's the case, Novuna 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 uphold this complaint and require Mitsubishi HC Capital UK PLC trading as Novuna Consumer Finance to put things right in the manner set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 22 December 2025.

Ben Jennings  
**Ombudsman**