DRN-5120740

The complaint

Ms R's complaint is, in essence, that Mitsubishi HC Capital UK PLC (trading at the time as Novuna Finance) (the 'Lender') acted unfairly and unreasonably by (1) being party to an unfair credit relationship with her under Section 140A of the Consumer Credit Act 1974 (as amended) (the 'CCA') and (2) deciding against paying a claim under Section 75 of the CCA.

What happened

Although both Ms R and Mr N are mentioned on much of the contemporary documents which relate to this complaint, it seems the purchase I'm making a decision about here was financed by a Credit Agreement only in Ms R's name. For this reason, I'll periodically refer only to Ms R, however, I do understand that both she and Mr N were involved.

The product at the centre of this complaint is their membership of a timeshare which I will refer to as the Fractional Club membership. This was purchased on 31 July 2018 with Ms R's sole name on the Credit Agreement. She borrowed £14,430 from the Lender. This was payable over 180 months at £166 per month, meaning the total to be paid over the term was £30,000 (the APR[1] was 11.9%).

The Fractional Club membership was a type of product which meant it provided future holidaying rights at the Supplier's suite of resorts, based on a points system. Ms R and Mr N bought 1,040 points on this occasion. However, the Fractional Club membership was also asset backed, which meant it gave Ms R and Mr N more than just holidaying rights. It included a share in the net sale proceeds of an Allocated Property named on the Purchase Agreement after this membership term ended, which in this case was in 2032.

Ms R – using a professional representative (the 'PR') – wrote to the Lender on 19 January 2024 (the 'Letter of Complaint') to raise a number of different concerns. As those concerns haven't materially 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 said Ms R and Mr N had been recommended the timeshare product by their friends who were existing customers of the Supplier. It said there was sales documentation, and written notes from the sales meeting, which confirmed they understood the process, wanted to go ahead with the purchase, and that they had since booked several holidays. The Lender rejected their complaint on every ground.

The complaint was then referred to the Financial Ombudsman Service. I issued a provisional decision (PD) about this case on 28 October 2025 in which I comprehensively set out my reasoning for not upholding the complaint. However, I invited the parties to respond with any further information or evidence they wanted to submit.

Further to this, I issued a communication to the parties on 18 November 2025 about commission. In this I said I wasn't persuaded that the commission arrangements between

[1] APR, or Annual Percentage Rate, is the yearly cost of a loan or credit, expressed as a percentage. It includes the interest rate plus any other mandatory fees, giving a more complete picture of the total cost of borrowing than the interest rate alone.

the Supplier and the Lender were likely to have led to a sufficiently extreme inequality of knowledge that rendered the credit relationship unfair to Ms R.

I've had a response from Ms R's PR which basically disagrees with my PD. I have read everything said on her behalf with great care. But as I said before, 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. No new information or evidence was submitted in response to my PD, but rather, it consisted of a re-submission of argument I'd already seen (and fully considered in detail).

I'm also satisfied that, where appropriate, I have applied the law and the various rules correctly. I previously told both parties in my PD about the overall legal and regulatory context that I think is relevant to this complaint. This is no different to that shared in several hundred published ombudsman decisions on very similar complaints – which can be found on the Financial Ombudsman Service's website. But in addition, I would add that the following regulatory rules/guidance are also relevant and have been considered:

The Consumer Credit Sourcebook ('CONC') – Found in the Financial Conduct Authority's (the 'FCA') Handbook of Rules and Guidance

Below are the most relevant provisions and/or guidance as they were at the relevant time:

- CONC 3.7.3 [R]
- CONC 4.5.3 [R]
- CONC 4.5.2 [G]

The FCA's Principles

The rules on consumer credit sit alongside the wider obligations of firms, such as the Principles for Businesses ('PRIN'). Set out below are those that are most relevant to this complaint:

- Principle 6
- Principle 7
- Principle 8

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 this, I am not upholding this complaint. This is my final decision.

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. This affords consumers ("debtors") a right of recourse against lenders which provided 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.

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 doesn't dispute that the relevant conditions are met. But for reasons I'll come on to below, it isn't necessary to make any formal findings on them here.

It was said in the Letter of Complaint that Fractional Club membership had been misrepresented by the Supplier at the Time of Sale because Ms R and Mr N were:

1. Told that they had purchased an investment that would appreciate in value when that was not true.
2. Told that they would own a share in a property that would increase in value during the membership term when that was not true.
3. Given misleading information about the ongoing management fees.
4. Given assurances at the time of the sale that they would have access to certain holidays when that was not true.

However, neither points 1 nor 2 strike me as misrepresentations even if such representations had been made by the Supplier (which I make no formal finding on). Telling prospective members that they were investing their money because they were buying a fraction or share of one of the Supplier's properties was not untrue. Even if the Supplier's sales representatives went further and suggested that the share in question would increase in value, perhaps considerably so, that sounds like nothing more than a honestly held opinion as there isn't enough evidence to persuade me that the relevant sales representative(s) said something that, while an opinion, amounted to a statement of fact that they did not hold or could not have reasonably have held.

As for points 3 and 4, while it's possible that Fractional Club membership was misrepresented at the Time of Sale for these reasons, I don't think it's probable. The allegations, as put, are given little to none of the colour or context necessary to demonstrating that the Supplier made a false statement of existing fact and/or opinion. Since there's no other specific examples or supporting evidence on file to back up the suggestion that the membership was misrepresented in these ways, I don't think it was.

So, while I recognise that Ms R and the PR have concerns about the way in which Fractional Club membership was sold by the Supplier, when looking at the claim Ms R has made under Section 75 of the CCA, I can only consider whether there was a factual and material misrepresentation by the Supplier. For the reasons I've set out above, I'm not persuaded that there was. So, this means that I don't think that the Lender acted unreasonably or unfairly when it dealt with this particular Section 75 claim.

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

I've already explained why I'm not persuaded that Fractional Club membership was actionably misrepresented by the Supplier at the Time of Sale. But there are other aspects of the sales process that, being the subject of dissatisfaction, I must explore with Section 140A in mind if I'm to consider this complaint in full – which is what I've done next.

Having considered the entirety of the credit relationship between Ms R and the Lender along with all of the circumstances of the complaint, I don't 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 standard of the Supplier's commercial conduct – which includes its sales and marketing practices at the Time of Sale along with any relevant training material;

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;
4. The inherent probabilities of the sale given its circumstances; and when relevant, any existing unfairness from a related credit agreement.
5. Any existing unfairness from a related credit agreement.

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

The Supplier's sales & marketing practices at the Time of Sale

Ms R's complaint about the Lender being party to an unfair credit relationship was made for several reasons.

The PR says, for instance, that the right checks weren't carried out before the Lender lent to Ms R. I haven't seen anything to persuade me this was the case in this complaint given its circumstances. But even if I were to find that the Lender failed to do everything it should have when it agreed to lend (and I make no such finding), I would have to be satisfied that the money lent to Ms R was actually unaffordable before also concluding that she lost out as a result and then consider whether the credit relationship with the Lender was unfair for this reason. However, from the information provided, I am not satisfied that the lending was unaffordable for Ms R.

Connected to this is the suggestion by the PR that the Credit Agreement was arranged by an unauthorised credit broker, the upshot of which is to suggest that the Lender wasn't permitted to enforce the Credit Agreement. However, it looks to me like Ms R knew, amongst other things, how much she was borrowing and repaying each month, who she was borrowing from and that she was borrowing money to pay for Fractional Club membership. And as the lending doesn't look like it was unaffordable for her, even if the Credit Agreement was arranged by a broker that didn't have the necessary permission to do so (which I make no formal finding on), I can't see why that led to Ms R suffering a financial loss – such that I can say that the credit relationship in question was unfair on her as a result. With that being the case, I'm not persuaded that it would be fair or reasonable to tell the Lender to compensate her, even if the loan wasn't arranged properly.

Ms R's PR also alleges she and Mr N were subjected to oppressive sales pressure at the point-of-sale meeting in Tenerife, Spain. However, the PR hasn't followed through on this allegation by explaining or describing exactly what happened and why this apparently meant that Ms R and Mr N had no choice about buying the Fractional membership.

However, I have noted very carefully what Ms R and Mr N had to say about this in their own client personal statement. This statement basically referred to there being an atmosphere during the sale which was "cramped" and without privacy. Ms R and Mr N say they found this set-up intrusive and intimidating, and that they weren't given enough 'space' to think or decide if they wanted the product. They added that there was limited opportunity to ask questions or have the loan Ms R took out explained clearly enough to them.

I understand the points being made. But I think it's also fair and reasonable to recognise that the circumstances of this case do tend to show that Ms R and Mr N would have attended this particular sales event with the full knowledge of what it was. I say this because it took place overseas and the Lender has supplied information showing that Ms R and Mr N were on a "Fly Buy" trip at the time, whereby they were likely based in holiday accommodation which was provided free (or was discounted) by the Supplier. This arrangement was based on

them being required to attend a timeshare sales presentation at a certain point during their stay. The Lender has produced what it says are some contemporaneous notes taken by the Supplier's timeshare sales agent at the time of the sale, outlining that Ms R and Mr N had had the timeshare product recommended to them by their friends and that they were interested in the Supplier's wide range of holidaying destinations. So, I think it's relevant that Ms R and Mr N attended the sales event against this backdrop.

Nevertheless, I do acknowledge that it's possible Ms R and Mr N may have felt weary after a sales process which they say felt "cramped" or which may have gone on for a long time, for example. But whilst I do accept that they describe a somewhat uncomfortable sales venue, they also say relatively little about what was actually said or done by the Supplier during the sales presentation which made them apparently feel as if they had *no choice but to purchase Fractional Club membership*, when they simply didn't want to. I think it's also highly relevant to say that they were given a 14-day cooling off period and they have not provided a credible explanation for why they did not cancel their membership during that time. So, with all of that being the case, I think there is insufficient evidence to demonstrate that Ms R and Mr N made the decision to purchase Fractional Club membership because their ability to exercise that choice was significantly and seriously impaired by pressure from the Supplier.

It was also said in the PR's Letter of Complaint that Ms R and Mr N were *"unable to access the holidays that they were led to believe the timeshare contract would entitle them to"*. But I've noted that Ms R and Mr N make no comments at all about this in their own statement, so it's not clear to me where this allegation comes from. It's also not entirely clear whether the PR is saying they thought they would be able to stay at the Allocated Property whenever they wanted, or they thought the availability of general accommodation using their holiday points more broadly was guaranteed.

However, I think it's reasonable for me to say that like any holiday accommodation, availability was not unlimited given the higher demand at peak times, like school holidays, for instance. Some of the sales paperwork Ms R and Mr N were given stated that the availability of holidays was subject to demand. I also find it unlikely that the Supplier would have made promises of the type suggested in the Letter of Complaint, and whilst I accept it's obviously possible that Ms R and Mr N may not have been able to take certain holidays at certain times, I have not seen enough to persuade me that this rendered Ms R's credit relationship with the Lender unfair.

Overall, therefore, I don't think that Ms R's credit relationship with the Lender was rendered unfair to her under Section 140A for any of the reasons above. But there is another reason, perhaps the main reason, why the PR says the credit relationship with the Lender was unfair to them. And that's the suggestion that Fractional Club membership was marketed and sold to them as an investment in breach of prohibition against selling timeshares in that way.

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

The Lender does not dispute, and I am satisfied, that Ms R'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 the PR says that the Supplier did exactly that at the Time of Sale – saying, in summary, that Ms R and Mr N were 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, 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.

A share in the Allocated Property clearly constituted an investment as it offered Ms R and Mr N the prospect of a financial return – whether or not, like all investments, that was more than what they 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 membership was marketed or sold to Ms R and Mr N 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 as an investment, i.e. told them or led them to believe that Fractional Club membership offered them the prospect of a financial gain (i.e., a profit) given the facts and circumstances of this complaint.

I am familiar with the sales information and processes generally used by the Supplier at the relevant time. There is competing evidence in this complaint as to whether Fractional Club membership was marketed and/or sold by the Supplier at the Time of Sale as an investment in breach of regulation 14(3) of the Timeshare Regulations.

On the one hand, it is clear that the Supplier made efforts to avoid specifically describing membership of the Fractional Club as an 'investment' or quantifying to prospective purchasers, such as Ms R, the financial value of the share in the net sales proceeds of the Allocated Property along with the investment considerations, risks and rewards attached to them.

On the other hand, I acknowledge that the Supplier's sales process left open the possibility that the sales representative may have positioned Fractional Club membership as an investment. So, I accept that it's also possible that Fractional Club membership was marketed and sold to Ms R as an investment in breach of Regulation 14(3).

However, whether or not there was a breach of the relevant prohibition by the Supplier is not ultimately determinative of the outcome in this complaint for reasons I will come on to shortly. And with that being the case, it's not necessary to make a formal finding on that particular issue for the purposes of this decision.

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

Having said that it was possible 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 could have had on the fairness of the credit relationship between Ms R 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.

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

To help me decide this point, I've considered the allegations as put forward by the PR. I have also reverted back to Ms R and Mr N's client personal statement and thought carefully about what they themselves had to say. It's also fair and reasonable that I consider all the wider circumstances in which this sale took place.

In so far as any allegation of investment related marketing carried out by the Supplier during the sale is concerned, the PR says, *"they were told they had purchased an investment which would appreciate in value."* The PR also says Ms R and Mr N were told, "*their share in the property and its value would increase during the term".* However, there was also no further or descriptive detail underpinning these allegations within the Letter of Complaint. And importantly, I once again don't think these allegations are reflected or reinforced by Ms R and Mr N's own memories of the sale as set out in their client personal statement. Their client personal statement was a document which, although unsigned, was evidently written in January 2024 and which afforded Ms R and Mr N the opportunity to describe for themselves what happened. In this they only say they *"were made to believe it was worth the investment and at the end of paying the loan our dream family holiday home would be ours"*.

So, I think it's reasonable to note that Ms R and Mr N's recollections are relatively brief in this area, limited as they are to what appears to be a partial misunderstanding of how the membership worked. As I've already explained, the fact that their membership did include an investment element didn't contravene the prohibition found in Regulation 14(3). And given the very specific allegations in the PR's Letter of Complaint about there being prohibited 'investment' marketing involved in this sale, there is simply not enough commentary and / or evidence from Ms R and Mr N themselves as regards any such alleged marketing of the timeshare as an investment, or even of their wider experience of holidaying through the Supplier.

I think at this juncture, it's also reasonable to point out that Ms R and Mr N's client personal statement has been made five-and-a-half years after the July 2018 sale and so the risk of recollection inaccuracy is something I need to consider. In my view, this adds considerable weight to there being a real danger of parts of their testimony, including several specific points raised by the PR on their behalf, being somewhat unreliable and inaccurate due to the passage of time. I think the substantial differences between the two accounts does point to this.

More so, I am also mindful that the risk of inaccuracy is further increased here by the *timing of the complaint* and of their statement: the bringing of the complaint and their own statement were evidently *after* the influential court judgment on Shawbrook & BPF v FOS[2]. This case put several important legal and factual findings into the public domain that have

[2] *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)*

had a significant influence on how future complaints about timeshares—especially fractional ownership models—are assessed. It brought significant public attention to issues specifically surrounding the alleged marketing and / or sale of timeshares as investments, which Regulation 14(3) prohibited. So, I think there's a high risk that Ms R and Mr N's suite of allegations - including those made in the Letter of Complaint - were influenced by these subsequent events.

The Supplier provided a copy of its contemporaneous contact notes which it says record some of the purchasing rationale Ms R and Mr N used at the time, when progressing ahead with the sale:

"*The*[y] *like the flexibility of the membership and choice of destinations, they want to have one good week a year as a family and maybe small individual breaks for each of them throughout the year. Finance on Mrs, PCCI shown and explained, both confirmed that they are comfortable with monthlies. They understand that next M-fee* [Annual Management Fee] *for them to pay is Jan 2020. Both very interested in paying for M-fee in advance No extra time needed, no extra Qs….*"

The Supplier also provided a copy of its contact notes of a few days later, dated 5 August 2018 when it says it contacted Mr N by 'phone.

"*.....spoke with Mr, all good very happy with their stay in TNF. Mrs is already back to work. Mr will send me acc details tonight as Mrs has all their cards with her at work….".*

I note the PR's comments about using these notes and I acknowledge the importance of approaching these contemporaneous notes from the Supplier with care. However, I still think it's reasonable that I place weight on them for the following reasons. As regards the first note, I think the apparent purchasing rationale and motivations are consistent with Ms R and Mr N's own client personal statement where they refer to their hopes for having a *"…dream of owning a holiday home".* The second set of notes do also seem to me to be consistent with a follow-up call I think would have normally been made during or near the end of the 14-day cooling off period, to confirm the purchase and discuss the future payment arrangements.

So, I think the evidence I've seen – which includes Ms R and Mr N's own comments - serves to underline their 2018 interest in the holidaying benefits their prospective membership offered. I think the evidence is more persuasive here that Ms R and Mr N attended the sales event with an interest in buying this type of product and they were encouraged by the Supplier's offer, which included the opportunity to earn some bonus holiday points probably by 'signing up' promptly. Of course, that doesn't mean they weren't interested in a share in the Allocated Property. After all, that wouldn't be surprising given the nature of the product at the centre of this complaint. But as they themselves do not persuade me that this purchase was motivated by the share in the Allocated Property and the possibility of a profit, I don't think a breach of Regulation 14(3) by the Supplier was likely to have been material to the decision they ultimately made.

All this leads me to think the evidence shows it's more likely that Ms R and Mr N would have still gone ahead with this purchase, whether or not it had been presented to them as an investment opportunity in breach of Regulation 14(3) of the Timeshare Regulations. I am very sorry to disappoint Ms R and Mr N, but I am not persuaded that their decision to purchase Fractional Club membership was motivated here by the prospect of a financial gain (i.e., a profit). On the contrary, I don't think the evidence supports this - I think the evidence shows they would have pressed ahead with their purchase whether or not there had been a breach of Regulation 14(3).

On this basis, I therefore don't think the credit relationship between Ms R and Mitsubishi HC Capital UK PLC (trading at the time as Novuna Finance) was unfair even if the Supplier had breached Regulation 14(3).

The provision of information by the Supplier at the Time of Sale

Ms R says she and Mr N were not given sufficient information at the Time of Sale by the Supplier about the ongoing costs of Fractional Club membership. The PR also says that the contractual terms governing the ongoing costs of membership and the consequences of not meeting those costs were unfair contract terms.

As I've already indicated, the case law on Section 140A makes it clear that it does not automatically follow that regulatory breaches create unfairness for the purposes of the unfair relationship provisions. The extent to which such mistakes render a credit relationship unfair must also be determined according to their impact on the complainant.

I acknowledge that it is also possible that the Supplier did not give Ms R sufficient information, in good time, on the various charges they could have been subject to as Fractional Club members in order to satisfy the requirements of Regulation 12 of the Timeshare Regulations (which was concerned with the provision of 'key information'). But even if that was the case, I cannot see that the ongoing costs of membership were applied unfairly in practice.

As for the PR's argument that there were one or more unfair contract terms in the Purchase Agreement, I can't see that any such terms were operated unfairly against Ms R in practice, nor that any such terms led her to behave in a certain way to her detriment. And with that being the case, I'm not persuaded that any of the terms governing Fractional Club membership are likely to have led to an unfairness that warrants a remedy.

Commission

As both sides already know, the Supreme Court handed down an important judgment on 1 August 2025 in a series of cases concerned with the issue of commission: *Johnson v FirstRand Bank Ltd, Wrench v FirstRand Bank Ltd and Hopcraft v Close Brothers Ltd [2025] UKSC 33* ('*Hopcraft, Johnson and Wrench*').

The Supreme Court ruled that, in each of the three cases, the commission payments made to car dealers by lenders were legal, as claims for the tort of bribery, or the dishonest assistance of a breach of fiduciary duty, had to be predicated on the car dealer owing a fiduciary duty to the consumer, which the car dealers did not owe. A "disinterested duty", as described in *Wood v Commercial First Business Ltd & ors and Business Mortgage Finance 4 plc v Pengelly* [2021] EWCA Civ 471, is not enough.

However, the Supreme Court held that the credit relationship between the lender and Mr Johnson was unfair under Section 140A of the CCA because of the commission paid by the lender to the car dealer. The main reasons for coming to that conclusion included, amongst other things, the following factors:

1. The size of the commission (as a percentage of the total credit charge). In Mr Johnson's case it was 55%. This was *"so high"* and *"a powerful indication that the relationship…was unfair"* (see paragraph 327);
2. The failure to disclose the commission; and
3. The concealment of the commercial tie between the car dealer and the lender.

The Supreme Court also confirmed that the following factors, in what was a non-exhaustive list, will normally be relevant when assessing whether a credit relationship was/is unfair under Section 140A of the CCA:

1. The size of the commission as a proportion of the charge for credit;
2. The way in which commission is calculated (a discretionary commission arrangement, for example, may lead to higher interest rates);
3. The characteristics of the consumer;
4. The extent of any disclosure and the manner of that disclosure (which, insofar as Section 56 of the CCA is engaged, includes any disclosure by a supplier when acting as a broker); and
5. Compliance with the regulatory rules.

From my reading of the Supreme Court's judgment in *Hopcraft, Johnson and Wrench*, it sets out principles which apply to credit brokers other than car dealer–credit brokers. So, when considering allegations of undisclosed payments of commission like the one in this complaint, *Hopcraft, Johnson and Wrench* is relevant law that I'm required to consider under Rule 3.6.4 of the Financial Conduct Authority's Dispute Resolution Rules ('DISP').

But I don't think *Hopcraft, Johnson and Wrench* assists Ms R in arguing that one or more of her credit relationships with the Lender was or were unfair to her for reasons relating to commission given the facts and circumstances of this complaint.

As the Supreme Court said in paragraph 326 of its judgment in *Hopcraft, Johnson and Wrench,* it's not possible to simply apply the reasoning of the Supreme Court in *Plevin v Paragon Personal Finance Ltd* [2014] UKSC 61 ('*Plevin*') to this complaint (as the PR does) when it's concerned with a type of product and marketplace that were very different to those in *Plevin*. What's more, Ms R was provided with information as to the price of this membership and the cost of the Credit Agreements (interest rate, fees, APR and monthly repayments). So, she was at least in a position from which she could understand the cost of the Credit Agreements and compare them with other options that might have been available at the Time of Sale.

I haven't seen anything to suggest that the Lender and Supplier were tied to one another contractually or commercially in a way that wasn't properly disclosed to Ms R, nor have I seen anything that persuades me that the commission arrangements between them gave the Supplier a choice over the interest rates that led Ms R into a credit agreement that cost disproportionately more than she otherwise could have obtained.

I acknowledge that it's possible that the Lender and the Supplier failed to follow the regulatory guidance in place at the Time of Sale insofar as it was relevant to disclosing the commission arrangements between them. But as I've said before, 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. And with that being the case, it isn't necessary to make a formal finding on that because, even if the Lender and the Supplier failed to follow the relevant regulatory guidance at the Time of Sale, it is for the reasons set out below that I don't think any such failures were themselves a reason to find one or more of the credit relationships in question unfair to Ms R.

In stark contrast to the facts of Mr Johnson's case, the amount of commission paid by the Lender to the Supplier for arranging the Credit Agreement that Ms R entered into wasn't high. At £577.20, it was only 4% of the amount borrowed and even less than that (3.7%) as

a proportion of the charge for credit. So, had she known at the Time of Sale that the Supplier was going to be paid a flat rate of commission at that level, I'm not currently persuaded that she either wouldn't have understood that or would have otherwise questioned the size of the payment at that time. After all, Ms R wanted Fractional Club membership and had no obvious means of her own to pay for it. And at such a low level, the impact of commission on the cost of the credit she needed for a timeshare she wanted doesn't strike me as disproportionate. So, I think she would still have taken out the loan to fund her purchase at the Time of Sale had the amount of commission been disclosed.

What's more, based on what I've seen so far, the Supplier's role as a credit broker wasn't a separate service and distinct from its role as the seller of timeshares. It was simply a means to an end in the Supplier's overall pursuit of successful timeshare sales. I can't see that the Supplier gave an undertaking – either expressly or impliedly – to put to one side its commercial interests in pursuit of that goal when arranging the Credit Agreements. And as it wasn't acting as an agent of Ms R but as the supplier of contractual rights she obtained under the Purchase Agreements, the transactions don't strike me as ones with features that suggest the Supplier had an obligation of 'loyalty' to her when arranging the Credit Agreements and thus a fiduciary duty.

Overall, therefore, I'm not persuaded that the commission arrangements between the Supplier and the Lender were likely to have led to a sufficiently extreme inequality of knowledge that rendered the credit relationship unfair.

Conclusion

For all the reasons I've comprehensively explained, I do not think that the Lender acted unfairly or unreasonably when it dealt with the relevant Section 75 claim.

Also, I am not persuaded that the Lender was party to a credit relationship with Ms R under the Credit Agreement that was unfair for the purposes of Section 140A of the CCA – nor do I see any other reason why it would be fair or reasonable to direct the Lender to compensate her.

My final decision

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

I do not direct Mitsubishi HC Capital UK PLC to do anything else.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms R to accept or reject my decision before 7 January 2026.

Michael Campbell
Ombudsman