

## **The complaint**

Mr W's complaint is, in essence, that Mitsubishi HC Capital UK Plc trading as Novuna Personal Finance (the 'Lender') acted unfairly and unreasonably in relation to a complaint he made about a timeshare he bought using credit from Novuna.

The complaint is only in Mr W's name as only he was named on the Credit Agreement. But, I will refer to both Mr and Mrs W throughout this decision where relevant as the timeshare in question was in both of their names.

## **What happened**

Mr and Mrs W purchased membership of a timeshare (the 'Fractional Club') from a timeshare provider (the 'Supplier') on 20 August 2019 (the 'Time of Sale'). They entered into an agreement with the Supplier to buy 910 fractional points at a cost of £12,421 (the 'Purchase Agreement').

Fractional Club membership was asset backed – which meant it gave Mr and Mrs W 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 W paid for their Fractional Club membership by taking finance of £12,421 from the Lender in Mr W's name only (the 'Credit Agreement').

Mr W contacted the Lender to complain. Our Service hasn't been provided with a copy of the complaint he made but the Lender confirmed they received this on 17 March 2022.

The Lender dealt with Mr W's concerns as a complaint and issued its final response letter on 5 April 2022, rejecting it on every ground.

Mr W then referred the complaint to the Financial Ombudsman Service. At that point, he explained his complaint as follows:

- He feels he's been mis-sold the loan.
- He is unable to keep up with the payments for the timeshare which has since 'defaulted'.
- The Lender would never offer him the loan outside of the timeshare.
- He is now locked in with both the Lender and Supplier, with both of them saying it is not their problem and he needs to pay.
- He never understood the time period he would be liable for and also didn't understand the increasing payments for the annual maintenance fees.

The complaint was assessed by an Investigator who, as part of their investigation, asked Mr W to provide further detail about what happened and why he thought he was mis-sold. He said:

- They were talked into the policy and told about some of the costs.
- They didn't receive an explanation of the degree of maintenance costs, the

- availability of the membership and 'all the other cons'.
- They were pushed into signing the paperwork.
- He was unaware of the cost implications of the loan and the length of it.
- The loan wouldn't have been approved in any capacity other than the timeshare agreement.
- The Supplier didn't disclose all the issues that come with having a fractional timeshare.

The Investigator, having considered the information on file, rejected the complaint on its merits.

Mr W disagreed with the Investigator's assessment and asked for a final decision to be made by an Ombudsman – which is why it was passed to me.

I considered the matter and issued a provisional decision dated 28 October 2024. In that decision I said:

**"Mr W's complaint about the Supplier's misrepresentations"**

*On my reading of Mr W's complaint, he suggests that he felt the Supplier misrepresented elements of the membership.*

*In order for me to say there was a misrepresentation made by the sales agent in the sale of the Fractional Club membership, I would have to say that there is evidence that Mr and Mrs W were told something that was not true and that induced them into taking out Fractional Club membership. If that was found, it's possible that the Lender could be jointly liable with the Supplier for those misrepresentations under the operation of Section 75 of the CCA.*

*But, Mr W hasn't provided any detail about what exactly they were told or promised in relation to the points he's raised at the Time of Sale in 2019, so I can't fairly say that what they were told was untrue.*

*And, regarding availability for example, I can see from Mr and Mrs W's signed Information Statement it explains that all bookings are subject to availability and are handled on a first-come first-served basis. And, that accommodation during peak times such as school holidays should be booked as far in advance as possible. I can't see that any other guarantees were made.*

*In short, therefore, I have not seen enough evidence to say, on balance, that any alleged false statements of fact were made to Mr and Mrs W by the Supplier.*

*So, having considered everything, and without a more detailed description of the conversation(s) surrounding any alleged misrepresentations, or any supporting evidence, Mr W's claim of misrepresentation doesn't have sufficient weight to succeed. I recognise that he has concerns about the way in which their Fractional Club membership was sold, which I address further below. But, given the evidence in this complaint, I'm not persuaded that there was an actionable misrepresentation by the Supplier for the reasons Mr W alleges. And, for that reason, I don't think it was unfair or unreasonable for the Lender to turn down a Section 75 claim.*

**"Mr W's complaint that the Lender hadn't treated him fairly"**

*I've already explained why I'm not currently persuaded that the contract entered into by Mr and Mrs W was misrepresented by the Supplier. But there are other aspects that, being the subject of Mr and Mrs W's dissatisfaction, I need to explore in more detail.*

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

Mr W has suggested that the Supplier pressured them into making the purchase.

From what I know of the Supplier's general sales practices at this time, I don't doubt that the sales process Mr and Mrs W attended was lengthy. But they say little about what was said or done by the Supplier during the process which meant they felt they had to purchase when they simply did not want to. So, I don't think the testimony provided sufficiently supports that any malicious or undue pressure was applied to them during the sale, such as to cause them to buy something they otherwise wouldn't have done.

It is also important to note that Mr and Mrs W were also given a 14-day 'cooling off' period following the sale, during which time they could cancel the purchase and the associated Credit Agreement without penalty. And, they haven't provided a credible explanation for why they didn't cancel during this time, if, as he attests, they only made the purchase due to the pressure placed on them by the Supplier.

I don't therefore think this is a reason to uphold this complaint given its circumstances.

Mr W also suggests that the right checks weren't carried out before the Lender lent to him. I haven't seen anything to persuade me that 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 Mr W was actually unaffordable at the Time of Sale before also concluding that he lost out as a result, and then consider whether the credit relationship with the Lender was unfair to him for this reason. Again, from the information provided, I am not satisfied that the lending was unaffordable for Mr W. If there is any further information on this (or any other points raised in this provisional decision) that Mr W wishes to provide, I would invite him to do so in response to this provisional decision.

### The provision of information at the Time of Sale

Mr W also says that the length of membership and annual maintenance fees were not adequately explained to them by the Supplier. In particular, that the fees could increase. But, he hasn't expanded on this point with any further detail such as what they were told about the fees and length of membership at the Time of Sale, or what information he felt they should have been given that they weren't.

But, it seems likely to me that Mr and Mrs W were told by the Supplier at the Time of Sale that the annual maintenance fees were payable each year and that they may increase. And, what the length of membership was. For example, I can see in their signed Information Statement it explains owners will be required to contribute to the charges for management, repair and maintenance of the property by means of an annual charge, payable whether weeks are used or not. And, that the charges will be budgeted annually and will be subject to increase or decrease as determined by the costs of managing the project and are payable annually in advance each year. It also explained that the first year of fees was 832 euros. I can also see that it explained that the duration of membership was 19 years, after which time the Allocated Property would be sold.

But in order to say that any actions or omissions by the Supplier at the Time of Sale warrant any relief to Mr W, I have to be persuaded that these actions and/or omissions caused unfairness to the associated credit relationship he had with the Lender. And Mr W hasn't explained how he felt this alleged lack of information caused an unfairness in the relationship between him and the Lender.

So, while it's possible the Supplier didn't give Mr and Mrs W sufficient information, in good time, on the various charges they could have been subject to as Fractional Club members

*and the length of their membership, in order to satisfy its regulatory responsibilities at the Time of Sale, I haven't seen enough to persuade me that this, alone, rendered Mr W's credit relationship with the Lender unfair to him.*

*Mr W also said he wasn't told about the cost of the loan and the length of the Credit Agreement. But, from the evidence available, it set out on the face of the loan agreement the total charge for the amount of credit being borrowed, along with the relevant interest and charges. And, it set out that the duration of the loan agreement would be 168 months.*

*So, I can't say this led to an unfairness that requires a remedy in this case."*

So, overall, taking into account all facts and circumstances of this complaint, I didn't think that the Lender acted unfairly or unreasonably in declining Mr W's complaints, and I wasn't persuaded that the Lender was party to a credit relationship with Mr W under the Credit Agreement that was unfair to him. And, having taken everything into account, I could see no other reason why it would be fair or reasonable to direct the Lender to compensate Mr W.

Neither party responded to my provisional decision, nor did they provide any further evidence or comments they wished to be considered.

### **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.

As neither party has provided any new evidence or arguments, I don't believe there is any reason for me to reach a different conclusion from that which I reached in my provisional decision (outlined above). I do wish to stress that I have considered all the evidence and arguments afresh before reaching that conclusion.

### **My final decision**

For these reasons, I do not uphold Mr W's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 11 December 2024.

Fiona Mallinson  
**Ombudsman**