

The complaint

Mr B's complaint is, in essence, that Mitsubishi HC Capital UK PLC trading as Novuna (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') and (2) deciding against paying a claim under Section 75 of the CCA.

What happened

Mr B (together with his wife) purchased membership of a timeshare (the 'Fractional Club') from a timeshare provider (the 'Supplier') on 27 March 2013 (the 'Time of Sale'). They entered into an agreement with the Supplier to buy 1,932 fractional points at a cost of £26,193 (the 'Purchase Agreement'). But after trading in their existing timeshare, they ended up paying £9,682 for membership of the Fractional Club.

Fractional Club membership was asset backed – which meant it gave Mr & Mrs B 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 B paid for their Fractional Club membership by taking finance of £9,862 from the Lender in his sole name (the 'Credit Agreement'). So, for the purposes of this complaint, Mr B is the only eligible complainant. Because of that, I will refer to Mr B only throughout my decision.

Mr B – using a professional representative (the 'PR') – wrote to the Lender on 5 March 2019 (the 'Letter of Complaint') to complain about:

1. Misrepresentations by the Supplier at the Time of Sale giving him a claim against the Lender under Section 75 of the CCA, which the Lender failed to accept and pay.
2. The Lender being party to an unfair credit relationship under the Credit Agreement and related Purchase Agreement for the purposes of Section 140A of the CCA.
3. The decision to lend being irresponsible because the Lender did not carry out the right creditworthiness assessment

I don't propose to list all of the allegations included within the Letter of Complaint as the parties are very familiar with them. However, I may refer to them in more specific terms, where I believe that adds value and clarity.

The Lender dealt with Mr B's concerns as a complaint and issued its final response letter on 22 May 2019 rejecting it on every ground.

Mr B then referred the complaint to the Financial Ombudsman Service. In the interim period the PR confirmed that it was no longer representing Mr B with his complaint. However, Mr B confirmed to this service that he still wanted us to investigate and resolve matters for him.

Mr B's complaint 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 B at the Time of Sale in breach of Regulation 14(3) of 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 B was rendered unfair to him for the purposes of section 140A of the CCA.

The Lender accepted the Investigator's assessment and made an offer to Mr B to put things right, based upon the investigator's findings. It said that the Supplier thought the holidays Mr B took were worth more than what he had paid for membership, so it agreed to write off any balance outstanding on the loan, but it did not offer to make any other payment to him. However, Mr B didn't think the Lender's redress calculations were right, so rejected the offer and asked for an ombudsman to consider his complaint, which is why it has been passed to me.

Having considered the offer put forward by the Lender, I sought further clarification from it in relation to Mr B's prior timeshare ownership and the values the Lender had attributed to holidays Mr B had taken whilst using his Fractional Club membership. I also sought clarification of whether allowance had been made for holiday points Mr B previously held benefit for under the non-fractional membership he held prior to purchase of Fractional Club membership.

In response, the Lender revisited its offer which was forwarded by this service for Mr B's consideration – it now offered to pay him £6,353.69, in addition to cancelling any remaining loan balance and timeshare. However, Mr B remained unhappy with the Lender's revised offer. In summary, he said:

- All of his capital outgoings to the Supplier should be repaid.
- The Lender should pay 8% interest per annum from when the loan was first provided.
- The Lender should pay "*some kind of penalty*" for their actions and those of the Supplier.
- As a member of the Suppliers Fractional Membership Club, his name should be removed from the Companies Register.

Having considered the relevant information about this complaint, whilst my proposals for putting things right were broadly the same as those recommended by our investigator, there were some important differences that I wanted to set out in order to ensure a fair and reasonable outcome. So, I issued a provisional decision ('PD') on 26 March 2025 giving Mr B and Mitsubishi HC Capital UK PLC trading as Novuna the opportunity to respond to my findings, before I reach a final decision.

In my PD I said:

I am required under DISP 3.6.4R of the Financial Conduct Authority ('FCA') Handbook 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 Lender has confirmed its acceptance of our investigator's findings without further comment. So, for the purpose of this decision, I do not need to consider the merits of Mr B's complaint any further and my decision here will be based upon Mr B's complaint being upheld for the reasons stated by our investigator, which is no longer in dispute.

The principal issue here focusses upon what the Lender needs to do to put things right for Mr B. It seems that despite our investigator's findings and recommendations, a mutually acceptable resolution couldn't be achieved. So, my decision here is focussed upon what I believe needs to be done to resolve Mr B's complaint in a way that is fair and reasonable to all parties.

Before I do that, I want to address some of Mr B's comments in response to the Lender's most recent offer. In particular:

- All of his capital outgoings to the Supplier should be repaid.

The complaint that has been referred to this service specifically relates to the Fractional Club membership Mr B purchased under the Credit Agreement with the Lender on 27 March 2013. So, whilst I accept that Mr B (together with Mrs B) purchased other timeshare products from the Supplier over a number of years preceding the Time of Sale, it would not be fair and reasonable to reflect any value or associated financial cost associated with those previous holdings as they were not paid for under the Credit Agreement I am looking at in this decision. And in any event, I've not seen any evidence to suggest that the Lender had any involvement with those purchases.

Therefore, the redress I propose is focussed solely upon putting Mr B back into the position he would've been, had he not purchased Fractional Club membership. Which, for the purpose of this complaint, means he (and Mrs B) would have remained members of the Supplier's Vacation Club timeshare product and not taken out Fractional Club membership.

- The Lender should pay 8% interest per annum from when the loan was first provided.

I've included this below. However, I should make it clear that the interest payable serves to reflect the period Mr B was without the funds/payments expended up until the point they are refunded. So, interest should be calculated from the point when Mr B actually made a repayment (under the Credit Agreement) or paid a management charge.

- The Lender should pay "*some kind of penalty*" for their actions and those of the Supplier.

It isn't the role of the Financial Ombudsman Service, nor is it afforded powers, to fine or otherwise financially penalise a financial business. That is the role of the regulator – here that's the FCA. Furthermore, the supply of timeshare and other holiday products are not regulated financial activities. However, I propose to direct the Lender to pay interest to Mr B, which is designed to compensate him for the time he has been out of pocket.

- As a member of the Suppliers Fractional Membership Club, his name should be removed from the Companies Register.

I'm not aware that Fractional Club member's details are recorded on company registers. And in any event, should Mr (and Mrs) B choose to accept this decision and rescind their Fractional Club membership, I would expect their names to be removed from the Supplier's records.

Fair Compensation

With the Lender having accepted our investigator's finding that Mr B 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 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 Mr B 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 B agrees to assign to the Lender his Fractional Points or hold them on trust for the Lender if that can be achieved.

Mr B was an existing Vacation Club member, and his membership was traded in against the purchase price of Fractional Club membership. Under his Vacation Club membership, he had 1,501¹ of Vacation Club Points. And, like Fractional Club membership, he had to pay annual management charges as a Vacation Club member. So, had Mr B not purchased Fractional Club membership, he would have always been responsible to pay an annual management charge of some sort. With that being the case, any refund of the annual management charges paid by Mr B from the Time of Sale as part of his Fractional Club membership should amount only to the difference between those charges and the annual management charges he would have paid as an ongoing Vacation Club member.

However, on that basis, he would have always been entitled to use the 1,501 Vacation Club points that he had immediately before the Time of Sale. From my understanding of how the Supplier's memberships worked, Vacation Club and Fractional Club points had the exact same 'purchasing power'. So, a holiday that cost 1,000 Fractional Club points would have been accessible to someone using 1,000 Vacation Club points. With that being the case, it would only be fair, in my view, for the Lender to make a deduction for fair usage when Mr B booked a holiday using more than the 1,501 points he already had. So, for example, the Supplier has said that in September 2013 Mr B booked a holiday using 1,500 points. It follows that I do not think it would be fair for the Lender to make any deduction in respect of this holiday as Mr B would have always been entitled to take this holiday under his existing membership.

Similarly, I can see that in 2016 Mr B took a holiday valued at only 120 points. But the following year, he took a number of holidays valued in total well over the 1,932 Fractional Points that he held. So, in this instance, the Lender needs to explain how it was that Mr B was able to take these extra holidays in excess of the points that he held. If he was able to 'roll over' points from 2016 to 2017, it would be fair to assume he would have been able to similarly roll over unused Vacation Club points too. And if he paid extra in 2017 to take more holidays, any deduction can only be made in relation to the Fractional Club points he used in excess of the Vacation Club points he would have had and should not take into account any extra he actually paid to take holidays. But if Mr B used more points than he had available over his Vacation Club entitlement, the Lender can make a deduction for usage, but only in respect of the extra points used.

¹ I've not seen specific details of Mr and Mrs B's Vacation Club membership, or the points they held under it. However, in a witness statement dated 21 January 2019, Mr B confirms that at the Time of Sale, "*we purchased an additional 431 points [...]*". The Purchase Agreement dated 27 March 2013 shows a total of 1,932 points, suggesting that the previous Vacation Club points holding was 1,501.

Finally, the Lender has attributed some values of holidays by looking at what they cost today (either by an online comparison or from the Supplier's information) and then worked backwards to see what they might have cost before inflation at the time the holidays were taken. This method might give a fair outcome when Mr B paid cash for holidays (if the amount paid was not known), but that is not how the Supplier's holiday model worked in practice. Rather, it was a subscription service where customers paid an upfront membership fee and annual maintenance fees to take holidays that were not otherwise available on the open market. So, I am not persuaded that the method the Lender has proposed, looking at what a similar holiday might cost today on the open market and working backwards, gives a fair proxy of the value of the holidays Mr B actually took. Here, if Mr B actually paid for holidays, I think it is fair for the Lender to use the amount paid as the cost of the holidays. And if he did not pay directly for the extra holidays, I think looking at what he paid each year in maintenance fees to access his 'points' is a fair proxy – after all, that was the charge the Supplier levied each year to let him take holidays.

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

- (1) The Lender should refund Mr B's repayments 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 difference between Mr B's Fractional Club annual management charges paid after the Time of Sale and what his Vacation Club annual management charges would have been had he not purchased Fractional Club membership.
- (3) The Lender can deduct:
 - i. The value of any promotional giveaways that Mr B used or took advantage of (including the travel savings bonus he was given by the Supplier); and
 - ii. The market value of the holidays* Mr B took using his Fractional Points *if* the Points value of the holiday(s) taken amounted to more than the total number of Vacation Club Points he would have been entitled to use at the time of the holiday(s) as an ongoing Vacation Club member. However, this deduction should be proportionate and relate only to the additional Fractional Points that were required to take the holiday(s) in question.

(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 B's credit file in connection with the Credit Agreement reported within six years of this decision.
- (6) If Mr B's Fractional Club membership is still in place at the time of this decision, as long as both Mr and Mrs B (as joint parties to the Purchase Agreement) 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 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 B 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.

Further, Novuna needs to send a full breakdown of how it works out compensation using this method in response to my provisional decision, so I can see it before I issue a final decision on this complaint.

As the time given for responses has now passed, Mr B's complaint was passed back to me to consider further and reach a final 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.

In response to my PD, Mr B confirms that he agrees with my findings. However, in doing so, he has highlighted further reasons why he felt pressured to upgrade to Fractional Membership in order to "*protect our investment*". He goes on to reference costs incurred, having engaged the services of various businesses in an attempt to recover his outlay.

Mr B accepts that any further claim against the Supplier does not fall within his claim against the Lender here. However, he has asked this service to advise him on whether he has a further claim against the Supplier and how he should proceed.

Whilst the Financial Ombudsman Service is able to provide informal guidance to consumers in order to help them understand their rights within the context of a complaint about a regulated financial business or service, its remit doesn't extend to the provision of legal or other forms of advice about any further potential claims that may or may not be made against the Supplier. So, if Mr B believes he may have further claims against the Supplier, he should seek advice from a reputable consumer body or regulated professional advisor.

In response to my PD, the Lender has provided an increased settlement / compensation offer totalling £15,168.60 (including statutory interest) together with a detailed rationale for that in line with the method I directed. And having carefully considered that offer, I think it is a fair outcome within the context of the complaint that Mr B has referred to this service.

Putting things right

For completeness, I repeat what the Lender needs to do to compensate Mr B – whether or not a court would award such compensation:

- (1) The Lender should refund Mr B's repayments 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 difference between Mr B's Fractional Club annual management charges paid after the Time of Sale and what his Vacation Club annual management charges would have been had he not purchased Fractional Club membership.

(3) The Lender can deduct:

- iii. The value of any promotional giveaways that Mr B used or took advantage of (including the travel savings bonus he was given by the Supplier); and
- iv. The market value of the holidays* Mr B took using his Fractional Points *if* the Points value of the holiday(s) taken amounted to more than the total number of Vacation Club Points he would have been entitled to use at the time of the holiday(s) as an ongoing Vacation Club member. However, this deduction should be proportionate and relate only to the additional Fractional Points that were required to take the holiday(s) in question.

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(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 B's credit file in connection with the Credit Agreement reported within six years of this decision.

(6) If Mr B's Fractional Club membership is still in place at the time of this decision, as long as both Mr and Mrs B (as joint parties to the Purchase Agreement) 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 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 B 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.

The Lender should provide a copy of its revised settlement offer to Mr B and, should he accept, ensure that settlement is facilitated in a timely manner.

My final decision

For the reasons set out above, I uphold Mr B's complaint and require Mitsubishi HC Capital UK PLC trading as Novuna to put things right in the manner directed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 4 June 2025.

Dave Morgan

Ombudsman