DRN-5623611

The complaint

Mr F's complaint is, in essence, that Mitsubishi HC Capital UK PLC trading as Novuna Consumer Finance[1] (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 claims under Section 75 of the CCA.

The timeshare in question was bought in the joint names of Mr F and Ms B, but as the credit agreement used to fund the purchase was in Mr F's sole name, he is the only eligible complainant here. I shall, however, refer to both Mr F and Ms B where appropriate to do so.

What happened

On 27 July 2013, Mr F and Ms B purchased a trial membership for £3,995 from a timeshare provider (the 'Supplier'). This entitled them to take five week's accommodation from the Supplier's portfolio of resorts over the following three years. This purchase was paid for with a loan from the Lender. This purchase (and the associated loan) is not the subject of this complaint and is included for background purposes only.

While on a holiday as part of the trial membership, Mr F and Ms B purchased full membership of a timeshare (the 'Fractional Club') from the Supplier on 14 October 2013 (the 'Time of Sale'). They entered into an agreement with the Supplier to buy 1,010 fractional points (the 'Purchase Agreement'). After trading in their existing trial membership, they ended up paying £16,623 for membership of the Fractional Club.

Fractional Club membership was asset backed – which meant it gave Mr F and Ms 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 F paid for their Fractional Club membership by taking finance of £19,952 from the Lender in his sole name (the 'Credit Agreement'). This also consolidated the outstanding balance of the loan taken out to fund the purchase of the trial membership.

Mr F – using a professional representative (the 'PR') – wrote to the Lender on 22 January 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. A breach of contract by the Supplier giving him a claim against the Lender under Section 75 of the CCA, which the Lender failed to accept and pay.
3. A breach of fiduciary duty by the Lender.
4. 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.

[1] At the time the lending was agreed, the business was trading as 'Hitachi'.

(1) Section 75 of the CCA: the Supplier's misrepresentations at the Time of Sale

Mr F says that the Supplier made a number of pre-contractual misrepresentations at the Time of Sale – namely that the Supplier:

- Told them that the purchase of Fractional Club membership was the only way they could exit their existing timeshare.
- Told them Fractional Club had a guaranteed end date when that was not true.
- Told them that that Fractional Club membership was a great investment which was guaranteed to make a profit, when that was not true.
- Told them they were joining an 'exclusive' membership, when that was not true.

Mr F says that he has a claim against the Supplier in respect of one or more of the misrepresentations set out above, and therefore, under Section 75 of the CCA, he has a like claim against the Lender, who, with the Supplier, is jointly and severally liable to Mr F.

(2) Section 75 of the CCA: the Supplier's breach of contract

Mr F says that the Supplier breached the Purchase Agreement because there is no guarantee that the Allocated Property will sell at the end of their membership.

As a result of the above, Mr F says that he has a breach of contract claim against the Supplier, and therefore, under Section 75 of the CCA, he has a like claim against the Lender, who, with the Supplier, is jointly and severally liable to Mr F.

(3) Breach of fiduciary duty by the Lender

Mr F says the Lender breached its fiduciary duty by not disclosing to him that it was paying commission to the Supplier as a result of the brokering of the Credit Agreement.

(4) Section 140A of the CCA: the Lender's participation in an unfair credit relationship

The Letter of Complaint set out several reasons why Mr F says that the credit relationship between him and the Lender was unfair to him under Section 140A of the CCA. In summary, they include the following:

- There were unfair terms within the Purchase Agreement and Credit Agreement as Mr F had no control over the sums he was charged or that were incurred. This is contrary to the Unfair Terms in Consumer Contracts Regulations 1999 (the 'UTCCR').
- Commission was paid to the Supplier by the Lender, and this was not disclosed to Mr F.
- The Supplier's sales presentation at the Time of Sale included misleading actions and/or misleading omissions under the Consumer Protection from Unfair Trading Regulations 2008 (the 'CPUT Regulations') as well as a prohibited practice under Schedule 1 of those Regulations.
- Fractional Club membership was not worth what they paid for it.
- No alternative choice of finance provider was given to Mr F.

The Lender dealt with Mr F's concerns as a complaint and issued its final response letter on 7 March 2019, rejecting it on every ground.

Mr F then referred the complaint to the Financial Ombudsman Service. It was assessed by

an Investigator who, having considered the information on file, upheld the complaint on its merits.

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

The Lender disagreed with the Investigator's assessment and asked for an Ombudsman's decision – which is why it was passed to me.

And having considered everything on file, I agreed with the Investigator in that I thought the complaint ought to be upheld. But I reached that conclusion having expanded somewhat on the reasons for doing so. So, in order to give both parties the opportunity to respond to my initial thoughts, I set them out in a provisional decision (the 'PD') and invited all parties to submit any new evidence or arguments that they wished me to consider before I made my final decision.

The provisional decision

In the PD I said:

"I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

And having done that, and having read and considered everything that the Lender said in response to the PD, I am satisfied that this complaint ought to be upheld, for the same reasons as I set out in 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 F and Ms B as an investment, which, in the circumstances of this complaint, rendered the credit relationship between Mr F and the Lender unfair to him for the purposes of Section 140A of the CCA.

However, before I explain why, I want to make it clear that my role as an Ombudsman is not to address every single point that has been made to date. Instead, it is to decide what is fair and reasonable in the circumstances of this complaint. So, while I recognise that there are a number of aspects to Mr F's complaint, it isn't necessary to make formal findings on all of them. This includes the allegations that the Supplier made actionable misrepresentations at the Time of Sale, and that the commission paid to the Supplier by the Lender was not disclosed, because, even if those aspects of the complaint ought to succeed, the redress I'm currently proposing puts Mr F in the same or a better position than he would be if the redress was limited to those other aspects.

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

Having considered the entirety of the credit relationship between Mr F and the Lender 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 F and the Lender.

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

The Lender does not dispute, and I am satisfied, that Mr F and Ms B'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 F says that the Supplier did exactly that at the Time of Sale – saying the following in a statement submitted to this Service:

> *"We then in October 2013 went to Malaga where again we had to attend a presentation but this was [sic] one was more intense and lasted for about 6 hours or more we met various people all saying the same thing Fractional points means great holidays and investment that works for your future whilst enjoying great holidays. We had an end date so at the end of that term we could sell our share and we would walk away with a profit but they were so adamant that we would enjoy this investment they said most people will invest again and again to build a bigger better nest egg for their futures.*
>
> *So we though [sic] what had we got to lose, great holidays our money back plus profit at the end of our term."*

Mr F alleges, therefore, that the Supplier breached Regulation 14(3) at the Time of Sale because:

(1) *There were two aspects to their Fractional Club membership: holiday rights and a profit on the sale of the Allocated Property.*

(2) *They were told by the Supplier that they would get their money back or more during the sale of Fractional Club membership.*

The term "investment" is not defined in the Timeshare Regulations. In Shawbrook & BPF v FOS, the parties agreed that, 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" at [56]. I will use the same definition.

Mr F and Ms B's share in the Allocated Property clearly constituted an investment as it offered them the prospect of a financial return – whether or not, like all investments, that was more than what they first put into it. But 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 F and Ms B 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 them 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.

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 F and Ms B, the financial value of their 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 F and Ms B as an investment.

For example, in the Member's Declaration document, there are 15 statements, each initialled and then the page signed as having been read. These include:

> *"5. We understand that the purchase of our Fraction is for the primary purpose of holidays and is not specifically for direct purposes of a trade in and that [the Supplier] makes no representation as to the future price or value of the Fraction."*

And the Standard Information form, for example, stipulated the following on page 8 under the heading "Primary Purpose":

> *"The purchase of Fractional Rights is for the primary purpose of holidays and is neither specifically for direct purposes of a trade in nor as an investment in real estate. [The Supplier] makes no representation as to the future price or value of the Allocated Property or any Fractional rights."*

When read on their own and together, these disclaimers go some way to making the point that the purchase of Fractional Rights shouldn't be viewed as an investment. But they weren't to be read on their own. They had to be read in conjunction with what else the Standard Information Form had to say, which included the following disclaimer:

> *11. Investment advice*
>
> *The Vendor, any sales or marketing agent and the Manager and their related businesses (a) are not licenced investment advisors authorized by the Financial Services Authority to provide investment or financial advice; (b) all the information has been obtained solely from their own experience as investors and is provided as general information only and as such it is not intended for use as a source of investment advice and (c) all purchasers are advised to obtain competent advice from legal, accounting and investment advisors to determine their own specific investment needs; (d) no warranty is given as to any future values or returns in respect of an Allocated Property.*

This disclaimer seems to have been aimed at distancing the Supplier from any investment advice that was given by its sales agents, telling customers to take their own investment advice, and repeating the point that the returns from membership from the Fractional Club weren't guaranteed.

Yet I think it would be fair to say that, while a prospective member who read the disclaimer in

question might well have thought that they would be wise to seek professional investment advice in relation to membership of the Fractional Club, rather than rely on anything they might have been told by the Supplier, it wouldn't have done much to dissuade them from regarding membership as an investment. In fact, I think it would have achieved rather the opposite.

It's also difficult to explain why it was necessary to include such a disclaimer in the Standard Information Form if there wasn't a very real risk of the Supplier marketing and selling membership of the Fractional Club as an investment given the difficulty of articulating the benefit of fractional ownership in a way that distinguishes it from other timeshares from the viewpoint of prospective members.

However, weighing up what happened in practice is, in my view, rarely as simple as looking at the contemporaneous paperwork. And there are a number of strands to Mr F's allegation that the Supplier breached Regulation 14(3) at the Time of Sale, including (1) that membership of the Fractional Club was expressly described as an "investment" and (2) that membership of the Fractional Club could make them a financial gain and/or would retain or increase in value.

So, I have considered:

(1) *whether it is more likely than not that the Supplier, at the Time of Sale, sold or marketed membership of the Fractional Club as an investment, i.e. told Mr F and Ms B or led them to believe during the marketing and/or sales process that membership of the Fractional Club was an investment and/or offered them the prospect of a financial gain (i.e., a profit); and, in turn*

(2) *whether the Supplier's actions constitute a breach of Regulation 14(3).*

And for reasons I'll now come on to, given the facts and circumstances of this complaint, I think the answer to both of these questions is 'yes'.

<u>How the Supplier marketed and sold the Fractional Club membership</u>

The type of membership being sold here was the Supplier's second version of what it called the Fractional Property Owners Club – FPOC2 (I shall continue to refer to it as the Fractional Club).

During the course of the Financial Ombudsman Service's work on complaints about the sale of timeshares, the Supplier has provided training material used to prepare its sales representatives for FPOC 2 – including:

1. *A document called the 2013/2014 Sales Induction Training (the '2013/2014 Induction Training');*
2. *Screenshots of a Electronic Sales Aid (the 'ESA'); and*
3. *A document called the "FPOC2 Fly Buy Induction Training Manual" (the 'Fractional Club Training Manual')*

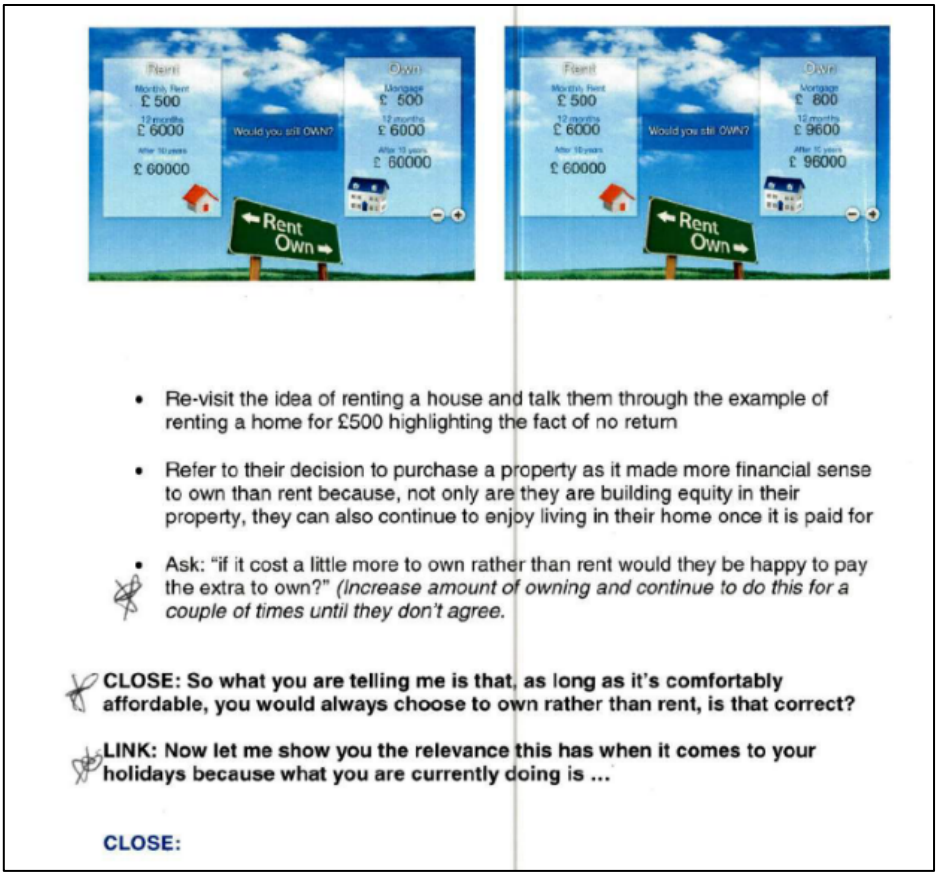
Neither the 2013/2014 Induction Training nor the ESA I've seen included notes of any kind. However, the Fractional Club Training Manual includes very similar slides to those used in the ESA. And according to the Supplier, the Fractional Club Training Manual (or something similar) was used by it to train its sales representatives at the Time of Sale. So, it seems to me that the Training Manual is reasonably indicative of:

(1) *the training the Supplier's sales representatives would have got before selling Fractional Club membership; and*

(2) *how the sales representatives would have framed the Supplier's multimedia presentation (i.e., the ESA) during the sale of Fractional Club membership to prospective members – including Fractional Club to Mr F and Ms B.*

The "Game Plan" on page 23 of the Fractional Club Training Manual indicates that, of the first 12 to 25 minutes, most of that time would have been spent taking prospective members through a comparison between "renting" and "owning" along with how membership of the Fractional Club worked and what it was intended to achieve.

Page 32 of the Fractional Club Training Manual covered how the Supplier's sales representatives should address that comparison in more detail – indicating that they would have tried to demonstrate that there were financial advantages to owning property, over 10 years for example, rather than renting:

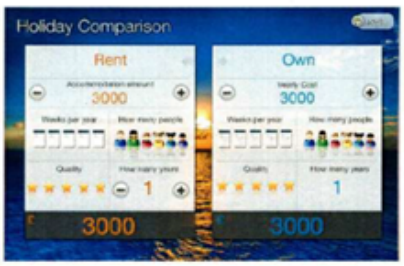


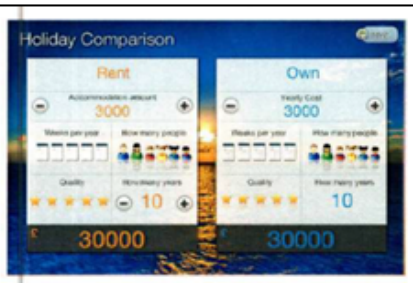
Indeed, one of the advantages of ownership referred to in the slide above is that it makes more financial sense than renting because owners "are building equity in their property". And as an owner's equity in their property is built over time as the value of the asset increases relative to the size of the mortgage secured against it, one of the advantages of ownership over renting was portrayed in terms that played on the opportunity ownership gave prospective members of the Fractional Club to accumulate wealth over time.

I acknowledge that the slides don't include express reference to the "investment" benefit of ownership. But the description alludes to much the same concept. It was simply rephrased in

the language of "building equity". And with that being the case, it seems to me that the approach to marketing Fractional Club membership was to strongly imply that 'owning' fractional points was a way of building wealth over time, similar to home ownership.

Page 33 of the Fractional Club Training Manual then moved the Supplier's sales representatives onto a cost comparison between "renting" holidays and "owning" them. Sales representatives were told to ask prospective members to tell them what they'd own if they just paid for holidays every year in contrast to spending the same amount of money to "own" their holidays – thus laying the groundwork necessary to demonstrating the advantages of Fractional Club membership:





- You are currently spending £xxxx on your holidays each year… (taken from survey)
- Confirm exactly what clients get for that money in terms of quality, people travelling and weeks
- Confirm the client will holiday for the next 10 years
- Explain total cost, with no inflation over a ten year period and ask what they own at the end of that period
- Compare spending the same money to own your holidays with better benefits, so that at the end of the ten years they would have received better value

CLOSE: So, looking at the two options which way makes more sense, to own or rent your holidays? *(Get the answer "**Owning**")* **This is why so many people choose to holiday with [redacted].**

LINK: Before I show you how the product works, I am just going to tell you how [redacted] started and where we are today.

CLOSE:

With the groundwork laid, sales representatives were then taken to the part of the ESA that explained how Fractional Club membership worked. And, on pages 41 and 42 of the Fractional Club Training Manual, this is what sales representatives were told to say to prospective members when explaining what a 'fraction' was:

"FPOC = small piece of […] World apartment which equals ***ownership of bricks and mortar***

[…]

Major benefit is the property is sold in nineteen years ***(optimum period to cover peaks and troughs in the market)*** *when sold you will get your share of the proceeds of the sale*

SUMMARISE LAST SLIDE:

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? How would you feel if there was an opportunity of doing that?***

[…]

LINK: Many people join us every day and one of the main questions they have is ***"how can we be sure our interests are taken care of for the full 19 years?*** *As it is very important you understand how we ensure that, I am going to ask Paul to come over and explain this in more details for you.*

[…]

*"Handover: (Manager's name) John and Mary love FPOC and have told me the best for them is……...****Would you mind explaining to them how their interest will be protected over the next 19 year[s]****?"*

(My emphasis added)

The Fractional Club Training Manual doesn't give any immediate context to what the manager would have said to prospective members in answer to the question posed by the sales representative at the handover. Page 43 of the manual has the word "script" on it but otherwise it's blank. However, after the Manual covered areas like the types of holiday and accommodation on offer to members, it went onto "resort management", at which point page 61 said this:

"T/O will explain slides emphasising that they only pay a fraction of maintaining the entire property. It also ensures property is kept in peak condition to maximise the return in 19 years['] time.

[…]

CLOSE: ***I am sure you will agree with us that this management fee is an extremely important part of the equation as it ensures the property is maintained in pristine condition so at the end of the 19 year period, when the property is sold, you can get the maximum return.*** *So I take it, like our owners, there is nothing about the management fee that would stop you taking you holidays with us in the future?..."*

(My emphasis added)

By page 68 of the Fractional Training Manual, sales representatives were moved on to the holiday budget of prospective members. Included in the ESA were a number of holiday comparisons. It isn't entirely clear to me what the relevant parts of the ESA were designed to show prospective members. But it seems that prospective members would have been shown that there was the prospect of a "return".

For example, on page 69 of the Fractional Club Induction Training Manual, it included the following screenshots of the ESA along with the context the Supplier's sales representatives were told to give to them:

[…]

"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 got a small part of your initial outlay, 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 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 F and Ms B) who were looking to buy holidays anyway, the comparison the slides make between the costs of Fractional Club membership and the higher cost of buying holidays on the open market was likely to have suggested to them that the financial return was in fact an overall profit.

I acknowledge that there was no 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 F and Ms B the financial value of the proprietary interest they were 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)).'[2] *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.

Indeed, if I'm wrong about that, I find it difficult to explain why, in paragraphs 77 and 78 followed by 99 and 100 of Shawbrook & BPF v FOS when, Mrs Justice Collins Rice said the following:

"[…] I endorse the observation made by Mr Jaffey KC, Counsel for BPF, that, whatever the position in principle, ***it is apparently a major challenge in practice for timeshare companies to market fractional ownership timeshares consistently with Reg.14(3). […] Getting the governance principles and paperwork right may not be quite enough.***

The problem comes back to the difficulty in articulating the intrinsic benefit of fractional ownership over any other timeshare from an individual consumer perspective*. […]* ***If it is not a prospect of getting more back from the ultimate proceeds of sale than the fractional ownership cost in the first place, what exactly is the benefit?*** *[…] What the interim use or value to a consumer is of a prospective share in the proceeds of a postponed sale of a property owned by a timeshare company – one they have no right to stay in meanwhile – is persistently elusive."*

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[2] 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

"[...] although the point is more latent in the first decision than in the second, it is clear that both ombudsmen viewed fractional ownership timeshares – simply by virtue of the interest they confer in the sale proceeds of real property unattached to any right to stay in it, and the prospect they undoubtedly hold out of at least 'something back' – as products which are inherently dangerous for consumers. ***It is a concern that, however scrupulously a fractional ownership timeshare is marketed otherwise, its offer of a 'bonus' property right and a 'return' of (if not on) cash at the end of a moderate term of years may well taste and feel like an investment to consumers who are putting money, loyalty, hope and desire into their purchase anyway.*** *Any timeshare contract is a promise, or at the very least a prospect, of long-term delight. [...] A timeshare-plus contract suggests a prospect of happiness-plus. And a timeshare plus 'property rights' and 'money back' suggests adding the gold of solidity and lasting value to the silver of transient holiday joy."*

I think the Supplier's sales representatives were encouraged to make prospective Fractional Club members consider the advantages of owning something and view membership as an opportunity to build equity in an allocated property rather than simply paying for holidays in the usual way. That was likely to have been reinforced throughout the Supplier's sales presentations by the use of phrases such as "bricks and mortar" and notions that prospective members were building equity in something tangible that could make them some money at the end. And this seems to be reflected in what Mr F says in his statement:

> *"We had an end date so at the end of that term we could sell our share and we would walk away with a profit but they were so adamant that we would enjoy this investment they said most people will invest again and again to build a bigger better nest egg for their futures."*

And indeed, as the Fractional Club Training Manual suggests that much would have been made of the possibility of prospective members maximising their returns (e.g., by pointing out that one of the major benefits of a 19-year membership term was that it was an optimum period of time to see out peaks and troughs in the market), 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.

Overall, therefore, as the slides I've referred to above seem to me to reflect the training the Supplier's sales representatives would have got before selling Fractional Club membership and, in turn, how they would have probably framed the sale of the Fractional Club to prospective members, they indicate that the Supplier's sales representative was likely to have led Mr F and Ms B to believe that membership of the Fractional Club was an investment that may lead to a financial gain (i.e., a profit) in the future. And with that being the case, I don't find Mr F either implausible or hard to believe when he says:

> *"…we met various people all saying the same thing Fractional points means great holidays and investment that works for your future whilst enjoying great holidays. We had an end date so at the end of that term we could sell our share and we would walk away with a profit but they were so adamant that we would enjoy this investment they said most people will invest again and again to build a bigger better nest egg for their futures."*

On the contrary, on the balance of probabilities, I think that's likely to be what Mr F and Ms B were led by the Supplier to believe at the relevant time. And for that reason, I think the Supplier breached Regulation 14(3) of the Timeshare Regulations at Time of Sale.

<u>Was the credit relationship between the Lender and the Consumer rendered unfair?</u>

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 F and the Lender under the Credit Agreement and related Purchase Agreement.

As the Supreme Court's judgment in Plevin makes clear, it does not automatically follow that regulatory breaches create unfairness for the purposes of Section 140A. Such breaches and their consequences (if there are any) must be considered in the round, rather than in a narrow or technical way.

It also it seems to me in light of Carney and Kerrigan that, if I am to conclude that a breach of Regulation 14(3) led to a credit relationship between Mr F and the Lender that was unfair to him and warranted relief as a result, whether the Supplier's breach of Regulation 14(3) led them to enter into the Purchase Agreement and Mr F into the Credit Agreement is an important consideration.

On my reading of Mr F's testimony, the prospect of a financial gain from Fractional Club membership was an important and motivating factor when they decided to go ahead with their purchase. That doesn't mean they were not interested in holidays. His own testimony demonstrates that they quite clearly were. And that is not surprising given the nature of the product at the centre of this complaint.

But as Mr F says (plausibly in my view) that Fractional Club membership was marketed and sold to them at the Time of Sale as something that offered them more than just holiday rights, on the balance of probabilities, I think his and Ms B's purchase was motivated by their 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 their existing trial membership and the more 'standard' type of timeshare available to them.

And Mr F says as much when he concludes his statement:

> *"So we though [sic] what had we got to lose, great holidays our money back plus profit at the end of our term."*

Mr F has not said or suggested, for example, that they would have pressed ahead with the purchase in question had the Supplier not led them 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 themselves to long-term financial commitments, had they not been encouraged by the prospect of a financial gain from membership of the Fractional Club, I'm not persuaded that they would have pressed ahead with their purchase regardless.

And with that being the case, I think the Supplier's breach of Regulation 14(3) was material to the decision they ultimately made.

Conclusion

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

The responses to the provisional decision

Mr F accepted what I had said in the PD, and had nothing further to add. The Lender did not agree, and said, in summary, that it did not think my provisional decision was supported by any evidence, and the witness testimony from Mr F that I had considered could not be relied

upon. It thought this because, in summary:

- The witness statement was unsigned and undated.
- Although the PR said the statement was collated from Mr F in 2019, the statement itself was not timestamped in the bundle of documents, and was not submitted with the original complaint in January 2019.
- The statement was only submitted in December 2023, which was after the Judicial Review (*Shawbrook & BPF v FOS*[3]). It appears that the PR included the witness statement within a date stamped bundle to give the impression it was received in 2019, when it was likely obtained in 2023.
- The statement contains only bare allegations, lacks any real context and fails to provide any specific information as to who said what, where, when and in what circumstances.
- The statement fails to describe any of the presentation they were shown, and indeed what within the presentation led them to believe this was an investment.
- The statement is vague and unclear about who they met during the sales process.

As the deadline for responses to my PD has now passed, the complaint has come back to me to reconsider. Before I come to my findings, I'll set out what I still consider to be the relevant legal and regulatory context.

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.

I also think the following is relevant to this complaint:

The Consumer Credit Act 1974 (as amended by the Consumer Credit Act 2006) (the 'CCA')

The timeshare(s) at the centre of the complaint in question was/were paid for using restricted-use credit that was regulated by the Consumer Credit Act 1974. As a result, the purchase(s) was/were covered by certain protections afforded to consumers by the CCA provided the necessary conditions were and are met. The most relevant sections as at the relevant time(s) are below.

Section 56: Antecedent Negotiations

Section 75: Liability of Creditor for Breaches by a Supplier

Sections 140A: Unfair Relationships Between Creditors and Debtors

Section 140B: Powers of Court in Relation to Unfair Relationships

Section 140C: Interpretation of Sections 140A and 140B

Case Law on Section 140A

Of particular relevance to the complaint in question are:

1. The Supreme Court's judgment in *Plevin v Paragon Personal Finance Ltd* [2014] UKSC

[3] See **Legal and regulatory context below**

61 (‘*Plevin*’) remains the leading case.

2. The judgment of the Court of Appeal in the case of *Scotland v British Credit Trust [2014] EWCA Civ 790 (‘Scotland and Reast’)* sets out a helpful interpretation of the deemed agency and unfair relationship provisions of the CCA.
3. *Patel v Patel* [2009] EWHC 3264 (QB) (‘*Patel*’) – in which the High Court held that determining whether or not the relationship complained of was unfair had to be made *“having regard to the entirety of the relationship and all potentially relevant matters up to the time of making the determination”*, which was the date of the trial in the case of an existing relationship or otherwise the date the relationship ended.
4. The Supreme Court’s judgment in *Smith v Royal Bank of Scotland Plc* [2023] UKSC 34 (‘*Smith*’) – which approved the High Court’s judgment in *Patel*.
5. *Deutsche Bank (Suisse) SA v Khan and others* [2013] EWHC 482 (Comm) – in

   Hamblen J summarised – at paragraph 346 – some of the general principles that apply to the application of the unfair relationship test.
6. *Carney v NM Rothschild & Sons Ltd* [2018] EWHC 958 (‘*Carney*’).
7. *Kerrigan v Elevate Credit International Ltd* [2020] EWHC 2169 (Comm) (‘*Kerrigan*’).
8. *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) (‘*Shawbrook & BPF v FOS*’).

<u>My Understanding of the Law on the Unfair Relationship Provisions</u>

Under Section 140A of the CCA, a debtor-creditor relationship can be found to have been or be unfair to the debtor because of one or more of the following: the terms of the credit agreement itself; how the creditor exercised or enforced its rights under the agreement; and any other thing done (or not done) by, or on behalf of, the creditor (either before or after the making of the agreement or any related agreement) (s.140A(1) CCA). Such a finding may also be based on the terms of any related agreement (which here, includes the Purchase Agreement) and, when combined with Section 56 of the CCA, on anything done or not done by the supplier on the creditor’s behalf before the making of the credit agreement or any related agreement.

Section 56 plays an important role in the CCA because it defines the terms “antecedent negotiations” and “negotiator”. As a result, it provides a foundation for a number of provisions that follow it. But it also creates a statutory agency in particular circumstances. And while Section 56(1) sets out three of them, the most relevant to this complaint are negotiations conducted by the supplier in relation to a transaction financed or proposed to be financed by a debtor-creditor-supplier agreement.

A debtor-creditor-supplier agreement is defined by Section 12(b) of the CCA as *“a restricted-use credit agreement which falls within section 11(1)(b) and is made by the creditor under pre-existing arrangements, or in contemplation of future arrangements, between himself and the supplier […]”*. And Section 11(1)(b) of the CCA says that a restricted-use credit agreement is a regulated credit agreement used to *“finance a transaction between the debtor and a person (the ‘supplier’) other than the creditor […] and “restricted-use credit” shall be construed accordingly.”*

So, the negotiations conducted by the Supplier during the sale of the timeshare(s) in question was/were conducted in relation to a transaction financed or proposed to be financed by a debtor-creditor-supplier agreement as defined by Section 12(b). That made

them antecedent negotiations under Section 56(1)(c) – which, in turn, meant that they were conducted by the Supplier as an agent for the Lender as per Section 56(2). And such antecedent negotiations were "any other thing done (or not done) by, or on behalf of, the creditor" under s.140A(1)(c) CCA.

Antecedent negotiations under Section 56 cover both the acts and omissions of the Supplier, as Lord Sumption made clear in *Plevin*, at paragraph 31:

"[Section] 56 provides that [when] antecedent negotiations for a debtor-creditor-supplier agreement are conducted by a credit-broker or the supplier, the negotiations are "deemed to be conducted by the negotiator in the capacity of agent of the creditor as well as in his actual capacity". The result is that the debtor's statutory rights of withdrawal from prospective agreements, cancellation and rescission may arise on account of the conduct of the negotiator whether or not he was the creditor's agent.' […] *Sections 56 and 140A(3) provide for a deemed agency, even in a case where there is no actual one. […] These provisions are there because without them the creditor's responsibility would be engaged only by its own acts or omissions or those of its agents."*

And this was recognised by Mrs Justice Collins Rice in *Shawbrook & BPF v FOS* at paragraph 135:

"*By virtue of the deemed agency provision of s.56, therefore, acts or omissions 'by or on behalf of' the bank within s.140A(1)(c) may include acts or omissions of the timeshare company in 'antecedent negotiations' with the consumer*".

In the case of *Scotland & Reast*, the Court of Appeal said, at paragraph 56, that the effect of Section 56(2) of the CCA meant that "*negotiations are deemed to have been conducted by the negotiator as agent for the creditor, and that is so irrespective of what the position would have been at common law"* before going on to say the following in paragraph 74:

"[...] there is nothing in the wording of s.56(2) to suggest any legislative intent to limit its application so as to exclude s.140A. Moreover, the words in s.140A(1)(c) "any other thing done (or not done) by, or on behalf of, the creditor" are entirely apposite to include antecedent negotiations falling within the scope of s.56(1)(c) and which are deemed by s.56(2) to have been conducted by the supplier as agent of the creditor. Indeed the purpose of s.56(2) is to render the creditor responsible for such statements made by the negotiator and so it seems to me wholly consistent with the scheme of the Act that, where appropriate, they should be taken into account in assessing whether the relationship between the creditor and the debtor is unfair."[4]

So, the Supplier is deemed to be Lender's statutory agent for the purpose of the pre-contractual negotiations.

However, an assessment of unfairness under Section 140A isn't limited to what happened immediately before or at the time a credit agreement and related agreement were entered into. The High Court held in *Patel* (which was recently approved by the Supreme Court in the case of *Smith),* that determining whether or not the relationship complained of was unfair had to be made *"having regard to the entirety of the relationship and all potentially relevant matters up to the time of making the determination"* – which was the date of the trial in the case of an existing credit relationship or otherwise the date the credit relationship ended.

The breadth of the unfair relationship test under Section 140A, therefore, is stark. But it isn't a right afforded to a debtor simply because of a breach of a legal or equitable duty. As the

[4] The Court of Appeal's decision in *Scotland* was recently followed in *Smith*.

Supreme Court said in *Plevin* (at paragraph 17):

"Section 140A […] does not impose any obligation and is not concerned with the question whether the creditor or anyone else is in breach of a duty. It is concerned with […] whether the creditor's relationship with the debtor was unfair."

Instead, it was said by the Supreme Court in *Plevin* that the protection afforded to debtors by Section 140A is the consequence of all of the relevant facts.

The Law on Misrepresentation

The law relating to **misrepresentation** is a combination of the common law, equity and statute – though, as I understand it, the Misrepresentation Act 1967 didn't alter the rules as to what constitutes an effective misrepresentation. It isn't practical to cover the law on misrepresentation in full in this decision – nor is it necessary. But, summarising the relevant pages in *Chitty on Contracts (33rd Edition)*, a material and actionable misrepresentation is an untrue statement of existing fact or law made by one party (or his agent for the purposes of passing on the representation, acting within the scope of his authority) to another party that induced that party to enter into a contract.

The misrepresentation doesn't need to be the only matter that induced the representee to enter into the contract. But the representee must have been materially influenced by the misrepresentation and (unless the misrepresentation was fraudulent or was known to be likely to influence the person to whom it was made) the misrepresentation must be such that it would affect the judgement of a reasonable person when deciding whether to enter into the contract and on what terms.

However, a mere statement of opinion, rather than fact or law, which proves to be unfounded, isn't a misrepresentation unless the opinion amounts to a statement of fact and it can be proved that the person who gave it, did not hold it, or could not reasonably have held it. It also needs to be shown that the other party understood and relied on the implied factual misrepresentation.

Silence, subject to some exceptions, doesn't usually amount to a misrepresentation on its own as there is generally no duty to disclose facts which, if known, would affect a party's decision to enter a contract. And the courts aren't too ready to find an implied representation given the challenges acknowledged throughout case law.

The Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010 (the 'Timeshare Regulations')

The relevant rules and regulations that the Supplier in this complaint had to follow were set out in the Timeshare Regulations. I'm not deciding – nor is it my role to decide – whether the Supplier (which isn't a respondent to this complaint) is liable for any breaches of these Regulations. But they are relevant to this complaint insofar as they inform and influence the extent to which the relationship in question was unfair. After all, they signal the standard of commercial conduct reasonably expected of the Supplier when acting as the creditor's agent in marketing and selling membership of the Owners Club.

The Regulations have been amended in places since the Time of Sale. So, I refer below to the most relevant regulations as they were at the time(s) in question:

- Regulation 12: Key Information
- Regulation 13: Completing the Standard Information Form

- Regulation 14: Marketing and Sales
- Regulation 15: Form of Contract
- Regulation 16: Obligations of Trader

The Timeshare Regulations were introduced to implement EC legislation, Directive 122/EC on the protection of consumers in respect of certain aspects of timeshare, long-term holiday products, resale and exchange contracts (the '2008 Timeshare Directive'), with the purpose of achieving 'a high level of consumer protection' (Article 1 of the 2008 Timeshare Directive). The EC had deemed the 2008 Timeshare Directive necessary because the nature of timeshare products and the commercial practices that had grown up around their sale made it appropriate to pass specific and detailed legislation, going further than the existing and more general unfair trading practices legislation.[5]

The Consumer Protection from Unfair Trading Regulations 2008 (the 'CPUT Regulations')

The CPUT Regulations put in place a regulatory framework to prevent business practices that were and are unfair to consumers. They have been amended in places since they were first introduced. And it's only since 1 October 2014 that they imposed civil liability for certain breaches – though not misleading omissions. But, again, I'm not deciding – nor is it my role to decide – whether the Supplier is liable for any breaches of these regulations. Instead, they are relevant to this complaint insofar as they inform and influence the extent to which the relationship in question was unfair as they also signal the standard of commercial conduct reasonably expected of the Supplier when acting as the creditor's agent in marketing and selling membership of the Owners Club.

Below are the most relevant regulations as they were at the relevant time(s):

- Regulation 3: Prohibition of Unfair Commercial Practices
- Regulation 5: Misleading Actions
- Regulation 6: Misleading Omissions
- Regulation 7: Aggressive Commercial Practices
- Schedule 1: Paragraphs 7 and 24

The Unfair Terms in Consumer Contracts Regulations 1999 (the 'UTCCR')

The UTCCR protected consumers against unfair standard terms in standard term contracts. They applied and apply to contracts entered into until and including 30 September 2015 when they were replaced by the Consumer Rights Act 2015.

Below are the most relevant regulations as they were at the relevant time(s):

- Regulation 5: Unfair Terms
- Regulation 6: Assessment of Unfair Terms
- Regulation 7: Written Contracts
- Schedule 2: Indicative and Non-Exhaustive List of Possible Unfair Terms

County Court Cases on the Sale of Timeshares

1. *Hitachi v Topping* (20 June 2018, Country Court at Nottingham) – claim withdrawn

[5] See Recital 9 in the Preamble to the 2008 Timeshare Directive.

following cross-examination of the claimant.

2. *Brown v Shawbrook Bank Limited* (18 June 2020, County Court at Wrexham)
3. *Wilson v Clydesdale Financial Services Limited* (19 July 2021, County Court at Portsmouth)
4. *Gallagher v Diamond Resorts (Europe) Limited* (9 February 2021, County Court at Preston)
5. *Prankard v Shawbrook Bank Limited* (8 October 2021, County Court at Cardiff)

Relevant Publications

The Timeshare Regulations provided a regulatory framework. But as the parties to this complaint already know, I am also required to take into account, when appropriate, what I consider to have been good industry practice at the relevant time – which, in this complaint, includes the Resort Development Organisation's Code of Conduct dated 1 January 2010 (the 'RDO Code').

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.

And having done so, and having reconsidered everything afresh in light of the Lender's response to my PD, I remain satisfied that it is fair and reasonable to uphold Mr F's complaint, for broadly the same reasons as set out above in the extract of my PD. I will, however, address the points made by the Lender in response.

The Lender has said that it has considerable doubts as to when the statement that has been sent in was compiled. It says that it thinks it likely that it was prepared later in 2023, and not in 2019 as stated by the PR. And if it was prepared in 2023, this would have been after the judgement in *Shawbrook & BPF v FOS*. Although the Lender has not said *why* this may make the statement less reliable, it is a fair assumption to make that it thinks the contents of the statement may have been influenced by that judgement.

But the Lender has not produced any evidence which leads me to think it is correct here, and that the statement *was* compiled much later than the PR states. And whilst I agree that the statement was not submitted in evidence until late 2023, it was submitted by the PR within a bundle of other documents that it says it received together in 2019, one of which is date stamped.

So, I agree that it is *possible* that the statement was compiled much later than the PR has said it was, but I don't think it is *probable* in this case. I do not think, given the lack of evidence to support what the Lender is saying, it would be fair and reasonable to discount what is set out in the statement and adduced in evidence.

Having accepted that the statement was likely compiled in January 2019, and that I can rely on what is contained within the statement when coming to my decision on the merits of Mr F's complaint, I have also reconsidered the strength of the evidence it provides.

The Lender has said that there is a lack of detail in Mr F's recollections, and that the lack of context, and detail about who said what and when, means that it is unreliable.

But I don't agree. The statement was written some six years after the event being complained about, so it is unsurprising that there are some things, such as the names of the

sales representatives and which of them carried out which roles, that are unclear. What I need to consider, is whether there is a core of acceptable evidence from Mr F such that the gaps in his recollection have little to no bearing on whether his testimony can be relied on, or whether such gaps are fundamental enough to undermine, if not contradict, what he says about what the Supplier said and did to market and sell Fractional Club membership as an investment.

So, for example, I do not find it in any way material that Mr L cannot remember the names of some of the Supplier's staff who were speaking to them. Not remembering someone's name from six years ago is not, in my view, material to whether the membership was sold as an investment or not.

And having considered the testimony, I am persuaded that it is likely to be a reliable recollection of events. I say this as it follows, in the main, what was said in the original Letter of Complaint (which was written around the same time) and contains a level of detail that only Mr F, as a party to the events, could have known, such as what they had to do during the trial membership sales process. And although it is a little generic, Mr F has described what they were told by the sales personnel at the Time of Sale, and how what they were told motivated them to make the purchase.

So, whilst being mindful of the fact that the testimony was compiled some 6 years after the event and having considered what the Lender has had to say on this issue, I'm satisfied, in this particular case, that I am able to place weight on what Mr F has said.

And as a result, and having reconsidered everything that has been submitted, I am satisfied that it is likely that the Supplier, at the Time of Sale, sold and/or marketed Fractional Club to Mr F and Ms B as an investment, in breach of Regulation 14(3) of the Timeshare Regulations. And I remain satisfied that this breach was material to the decision Mr F and Ms B ultimately made to purchase membership of the Fractional Club.

And with that being the case, I am satisfied that the Lender participated in and perpetuated an unfair credit relationship with Mr F under the Credit Agreement and related Purchase Agreement for the purposes of Section 140A.

Taking everything into account, I think it is fair and reasonable that I uphold this complaint.

Putting things right

In the PD I set out how I thought the Lender should calculate and pay fair compensation to Mr F. The Lender did not make any submissions regarding this, and having reconsidered everything, I see no reason to depart from what I said in the PD in relation to it. For clarity, I have set this section out again here.

Fair Compensation

Having found that Mr F and Ms 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, in my view, the relationship between the Lender and Mr F 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 they not purchased the Fractional Club membership (i.e., not entered into the Purchase Agreement), and Mr F therefore not entered into the Credit Agreement, provided Mr F (and Ms B should she still be a named member) agree to assign to the Lender their 1,010 Fractional Points or hold them on trust for the Lender if that can be achieved.

Mr F and Ms B 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 F and Ms B'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 F – whether or not a court would award such compensation:

(1) The Lender should refund Mr F's repayments to it under the Credit Agreement, including any sums paid to settle the debt, and cancel any outstanding balance if there is one.

(2) In addition to (1), the Lender should also refund:

i. The annual management charges paid as a result of Fractional Club membership.

ii. The difference between the trade-in value given to Mr F and Ms B's trial membership and the capital sum refinanced from the loan taken to pay for the trial membership into the Credit Agreement.

(3) The Lender can deduct:

i. The value of any promotional giveaways that Mr F and Ms B used or took advantage of; and

ii. The market value of the holidays* Mr F and/or Ms B took using the Fractional Points.

(I'll refer to the output of steps 1 to 3 as the 'Net Repayments' hereafter)

(4) Simple interest** at 8% per annum should be added to each of the Net Repayments from the date each one was made until the date the Lender settles this complaint.

(5) The Lender should remove any adverse information recorded on Mr F's credit file in connection with the Credit Agreement reported within six years of this decision.

(6) If this Fractional Club membership is still in place at the time of this decision, as long as Mr F (and Ms B if she is still a named member) agree to hold the benefit of the interest in the Allocated Property for the Lender (or assign it to the Lender if that can be achieved), the Lender must indemnify Mr F and/or Ms B against all ongoing liabilities as a result of the 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 F and/or Ms B took using the 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. As the Lender did not say

as requested, in response to the PD, that it proposed to deduct *more* than the annual management charge for the year that any holiday(s) were taken, then my direction is that the alternative I have suggested above should be used.

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

My final decision

My final decision is that I uphold this complaint, and direct Mitsubishi HC Capital UK PLC trading as Novuna Consumer Finance to calculate and pay fair compensation to Mr F as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 11 July 2025.

Chris Riggs
Ombudsman