DRN-5703952

The complaint

Mr P's complaint is, in essence, that Mitsubishi HC Capital UK Plc trading as Novuna (the 'Lender') acted unfairly and unreasonably under the Consumer Credit Act 1974 (the 'CCA').

Background to the complaint

Mr P purchased membership of a timeshare (the 'Fractional Club') from a timeshare provider (the 'Supplier') on 6 July 2016 (the 'Time of Sale'). He and his partner, Mrs P, entered into an agreement with the Supplier to buy 1,010 fractional points at a cost of £16,789 (the 'Purchase Agreement'). But after trading in an existing trial membership, Mr P ended up paying £15,989 for membership of the Fractional Club.

Fractional Club membership was asset backed – which meant it gave Mr P more than just holiday rights. It also included a share in the net sale proceeds of a property named on their Purchase Agreement (the 'Allocated Property') after their membership term ends.

Mr P paid for the Fractional Club membership by taking finance of £15,989 from the Lender (the 'Credit Agreement'). The finance was taken out in Mr P's sole name and as such he is the only eligible complainant here. But the Fractional Club membership is in joint names with Mrs P, and she was present at the Time of Sale, so I will also refer to her where applicable.

Mr P – using a professional representative (the 'PR') – wrote to the Lender on 16 January 2020 (the 'Letter of Complaint') to complain about the events that happened at the Time of Sale. In summary, the Letter of Complaint says:

- They were told by the Supplier they could relinquish the fraction at any time without penalty, but that was not true.
- They were told by the Supplier they could resell the fractional ownership at any time and that it guaranteed a return on their investment, but this was not true.
- They were told by the Supplier they would receive accommodation that was of a five-star standard, but this was not true as not all of the Supplier's accommodation is of that standard.
- They were told by the Supplier they were guaranteed availability, but this was not true as availability was limited and they were only ever offered accommodation in Turkey and mainland Spain.
- They were told by the Supplier the resorts were for members only, but this was not true as non-members could stay at the resorts and the Supplier advertised on the internet and television.
- They were pressured by the Supplier into purchasing the Fractional Club membership and the Credit Agreement.

The Lender dealt with Mr P's concerns as a complaint and issued its final response letter on 26 June 2020, rejecting it on every ground.

Mr P then referred the complaint to the Financial Ombudsman Service. It was assessed by an Investigator who, having considered the information on file, rejected the complaint on its merits.

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

I set out my thoughts in a provisional decision (the 'PD'). In short, I agreed with the Investigator but wanted to give both parties to consider what I said, and provide any further evidence and arguments, before I set out my final decision. I began by setting out the legal and regulatory context and what I considered to be good industry practice, as follows:

"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 will refer to and set out several regulatory requirements, legal concepts and guidance in this decision, but I am satisfied that of particular relevance to this complaint is:

- *The CCA (including Section 75, 75A and Sections 140A-140C).*
- *The law on misrepresentation.*
- *The Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010 (the 'Timeshare Regulations').*
- *Case law on Section 140A of the CCA – including, in particular:*

    - *The Supreme Court's judgment in Plevin v Paragon Personal Finance Ltd [2014] UKSC 61 ('Plevin') (which remains the leading case in this area).*
    - *Scotland v British Credit Trust [2014] EWCA Civ 790 ('Scotland and Reast')*
    - *Patel v Patel [2009] EWHC 3264 (QB) ('Patel').*
    - *The Supreme Court's judgment in Smith v Royal Bank of Scotland Plc [2023] UKSC 34 ('Smith').*
    - *Carney v NM Rothschild & Sons Ltd [2018] EWHC 958 ('Carney').*
    - *Kerrigan v Elevate Credit International Ltd [2020] EWHC 2169 (Comm) ('Kerrigan').*
    - *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').*

Good industry practice – the RDO Code

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')."

I then set out my provisional findings, as follows:

"My provisional findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

And having done that, I do not currently think this complaint should be upheld.

But 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, if I have not commented on, or referred to, something that either party has said, that does not mean I have not considered it.

What is more, I have made my decision on the balance of probabilities – which means I have based it on what I think is more likely than not to have happened given the available evidence and the wider circumstances.

I would also like to set out my thoughts on the information provided to us by the PR during the course of this complaint.

Direct testimony from the consumer, in full and in their own words, is important in a case like this. It allows the decision-maker to assess credibility and consistency, to know precisely what was supposedly said, and to understand the context in which it was supposedly said.

The PR provided some handwritten notes as part of its initial submission to our Service. The notes aren't signed or dated, but the notes appear to have been taken when the PR spoke with Mr P as part of their initial case preparations as they contain some specific details about his interactions with the Supplier. What's more, those details are also set out in the Letter of Complaint. Because of this, I think I can place some weight on what's written in these notes.

On 2 November 2023, in response to a request from the Investigator in this case, the PR provided what it says were notes "taken from our interview with [Mr P] in his home". However, the notes contain some information that simply doesn't match up with what I've seen about Mr P's interactions with the Supplier. For example, they say that Mr P owned another timeshare with the Supplier that was due to run in perpetuity, but this isn't true – Mr P only held a trial membership with one week remaining. For these reasons, I'm unable to place much weight on what's said by the PR in those notes.

Then, in response to the Investigator's findings, the PR said:

"These new upgraded contracts did not offer any additional benefits to our clients and only continued the rights they already had but with a shortened duration, our clients would have the Fractional Rent allocation should they wish to rent out within the asset back investment, with a shortened term to sell at the end of the term for large profit."

But once again, this simply isn't the case. Mr P did gain additional benefits that he didn't have as a trial member, and he also didn't receive a shorter membership duration because, as I've said, he was a trial member with one week left to use in that membership.

Further, a letter of complaint (or claim) is not evidence – especially when, as here, it contains bare allegations or a mere summary of the consumer's allegations.

With all this considered, I'm unable to place much evidentiary weight on the Letter of Complaint, and I'm unable to place much, if any, weight on the subsequent information sent by the PR. So, I have relied on the paperwork that's been provided, the handwritten notes provided with the Letter of Complaint, and the particular circumstances of the case.

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

The CCA introduced a regime of connected lender liability under Section 75 that affords consumers ("debtors") a right of recourse against lenders that provide the finance for the acquisition of goods or services from third-party merchants ("suppliers") in the event that there is an actionable misrepresentation and/or breach of contract by the supplier.

In short, a claim against the Lender under Section 75 essentially mirrors the claim Mr P could make against the Supplier.

Certain conditions must be met if the protection afforded to consumers is engaged, including, for instance, the cash price of the purchase and the nature of the arrangements between the parties involved in the transaction. The Lender does not dispute that the relevant conditions are met in this complaint. And as I'm satisfied that Section 75 applies, if I find that the Supplier is liable for having misrepresented something to Mr P at the Time of Sale, the Lender is also liable.

This part of the complaint was made by the PR for the reasons I set out at the start of this decision. While I recognise that Mr P has concerns about the way in which the membership was sold to him and Mrs P, he hasn't persuaded me that there was an actionable misrepresentation by the Supplier at the Time of Sale for any of the reasons he alleges.

And I say this because beyond the bare allegations set out in the Letter of Complaint, little to no evidence has been provided to support them, such as what exactly they were told, by whom and in what context.

What's more, as there's nothing else on file that persuades me there were any false statements of existing fact made to Mr P by the Supplier at the Time of Sale, I don't think there was an actionable misrepresentation by the Supplier for the reasons he alleges.

For these reasons, therefore, I don't think the Lender is liable to pay Mr P any compensation for the alleged misrepresentations of the Supplier. And with that being the case, I don't think the Lender acted unfairly or unreasonably when it dealt with the Section 75 claim in question.

Section 75 of the CCA: the Supplier's breach of contract

I've already summarised how Section 75 of the CCA works and why it gives Mr P a right of recourse against the Lender. So, it isn't necessary to repeat that here other than to say that, if I find that the Supplier is liable for having breached the Purchase Agreement, the Lender is also liable.

The PR says in the Letter of Complaint that Mr P didn't receive the holidays he says he was promised he would receive through the Fractional Club membership. I have read this as an allegation that the Supplier has breached the Purchase Agreement.

But, given the lack of evidence to support this allegation, I am not persuaded that there has been a breach of contract here which warrants compensation.

Like any holiday accommodation, availability was not unlimited – given the higher demand at peak times, like school holidays, for instance. Some of the sales paperwork signed by Mr P and Mrs P states that the availability of holidays was/is subject to demand.

Overall, therefore, from the evidence I have seen to date, I do not think the Lender is liable to pay Mr P any compensation for a breach of contract by the Supplier. And with that being the case, I do not think the Lender acted unfairly or unreasonably when it dealt with the Section 75 claim in question.

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

I have already explained why I am not persuaded that Mr P had a successful claim under Section 75 of the CCA. But, the PR also says that Mr P was pressured into purchasing the Fractional Club membership and that it was sold to him and Mrs P as an investment when it was not supposed to be as it says:

"Our clients have since found out that firstly, it is illegal to buy timeshare [sic] under the new timeshare act of 2012 as an investment and also having looked into the paperwork It [sic] states in the contract that they will only sell clients fractional timeshare if the client buys into a Freehold Property with [the Supplier]."

The PR has suggested in its response to our Investigator that the contract is not a "timeshare contract" as its terms instead fell within the definition of a "Collective Investment Scheme". But the Lender does not dispute, and I am satisfied, that Mr P's Fractional Club membership met the definition of a "timeshare contract" and was a "regulated contract" for the purposes of the Timeshare Regulations. I say this because they acquired holiday rights when purchasing the membership. And as such, the Fractional Club membership was exempt from giving rise to a Collective Investment Scheme (see paragraphs 39-54 in Shawbrook & BPF v FOS).

Regulation 14(3) of the Timeshare Regulations prohibited the Supplier from marketing or selling membership of the Fractional Club as an investment. This is what the provision said at the Time of Sale:

"A trader must not market or sell a proposed timeshare contract or long-term holiday product contract as an investment if the proposed contract would be a regulated contract."

But the PR says that the Supplier did exactly that at the Time of Sale. So, for completeness, that is what I have considered here.

However, as the allegations of a pressured sale and a possible breach of Regulation 14(3) do not fall neatly into a claim under Sections 75 or 75A of the CCA, I must turn to another provision of the CCA if I am to consider these aspects of the complaint and arrive at a fair and reasonable outcome. And that provision is Section 140A.

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."

The Lender doesn't dispute that there was a pre-existing arrangement between it and the Supplier. So, the negotiations conducted by the Supplier during the sale of Mr P's membership of the Fractional Club 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.140(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."[1]

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

So, the Supplier is deemed to be the 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 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.

I have considered the entirety of the credit relationship between Mr P and the Lender along with all of the circumstances of the complaint and I do not 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 all the evidence provided by both parties on what was likely to have been said and/or done at the Time of Sale.

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

As I have already said, although the PR has not correctly identified the Timeshare Regulations, or what these say, in effect it says that the Supplier breached Regulation 14(3) of the Timeshare Regulations. 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 and Mrs P's share in the Allocated Property clearly, in my view, 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 P as an investment in breach of Regulation 14(3), I have to be persuaded that it was more likely than not that the Supplier marketed and/or sold membership to 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.

From the information presented to me, I can see the Supplier did make efforts to avoid specifically describing membership of the Fractional Club as an 'investment' or quantifying to prospective purchasers, such as Mr P, the financial value of his share in the net sales proceeds of the Allocated Property along with the investment considerations, risks and rewards attached to them. For example, the Member's Declaration document says:

"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."

With that said, I accept that it's possible that Fractional Club membership was marketed and sold to Mr P as an investment in breach of Regulation 14(3) given the difficulty the Supplier was likely to have had in presenting a share in the net sales proceeds of the Allocated Property as an important feature of Fractional Club membership without breaching the relevant prohibition.

However, I don't think it's necessary to make a formal finding on this point because, as I'll go on to explain, I'm not currently persuaded this makes a difference to the outcome of Mr P's complaint anyway.

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

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.

I am also mindful of what HHJ Waksman QC (as he then was) and HHJ Worster had to say in Carney and Kerrigan (respectively) on causation.

In Carney, HHJ Waksman QC said the following in paragraph 51:

"[…] In cases of wrong advice and misrepresentation, it would be odd if any relief could be considered if they did not have at least some material impact on the debtor when deciding whether or not to enter the agreement. […] in a case like the one before me, if in fact the debtors would have entered into the agreement in any event, this must surely count against a finding of unfair relationship under s140A. […]"

And in Kerrigan, HHJ Worster said this in paragraphs 213 and 214:

*"[…] The terms of section 140A(1) CCA do not impose a requirement of "causation" in the sense that the debtor must show that a breach caused a loss for an award of substantial damages to be made. The focus is on the unfairness of the relationship, and the court's approach to the granting of relief is informed by that, rather than by a demonstration that a particular act caused a particular loss. Section 140A(1) provides only that the court **may** make an order **if** it determines that the relationship is unfair to the debtor. […]*

[…] There is a link between (i) the failings of the creditor which lead to the unfairness in the relationship, (ii) the unfairness itself, and (iii) the relief. It is not to be analysed in the sort of linear terms which arise when considering causation proper. The court is to have regard to all the relevant circumstances when determining whether the relationship is unfair, and the same sort of approach applies when considering what relief is required to remedy that unfairness. […]"

So, it seems to me that, if I am to conclude that a breach of Regulation 14(3) led to a credit relationship between Mr P and the Lender that was unfair to him and warranted relief as a result, whether the Supplier's breach of Regulation 14(3) which, having taken place during its antecedent negotiations with them, is covered by Section 56 of the CCA, falls within the notion of "any other thing done (or not done) by, or on behalf of, the creditor" for the purposes of 140(1)(c) of the CCA and deemed to be something done by the Lender) led him (and Mrs P) to enter into the Purchase Agreement and the Credit Agreement is an important consideration.

As I explained previously, the PR provided some notes that it says were taken from an interview they held with Mr P at his home. But, as I have explained above, I don't consider that I can put much, if any, weight on that evidence.

But, as outlined previously, along with the Letter of Complaint the PR provided a hand-written note that says the following:

"Trial initially. 3995.
Used 5 weeks on last week
Upgraded to Paradise Club fractions 15989 on [the Lender] finance
Used every year 1-2 weeks.
Can't get what you were showed (sic)
No availability can only get Spain or Turkey (1 resort)
Need to use [a third-party exchange network]"

Although this hand-written note is not signed or dated, I think it's likely to have been written by the PR around the time that they first spoke with Mr P about his complaint as it appears to be a record of that initial conversation. As such, I think I can place weight on the contents of this note. Given what the hand-written note says, it seems to me that Mr P set out why he was unhappy with the membership. And from what he's had to say, this was due to how the membership functioned as a holiday product. For example, he's described issues with availability and destinations as well as not getting what they had been shown at the Time of Sale, which appears to relate to issues with accommodation. But there's nothing in the note which indicates that he was motivated to purchase by the prospect of making a profit upon the sale of the Allocated Property. If this was something which was important to him, it's difficult to understand why it was not mentioned when he first spoke with the PR.

On balance, therefore, even if the Supplier had marketed or sold the Fractional Club membership as an investment in breach of Regulation 14(3) of the Timeshare Regulations, I am not persuaded that Mr P's decision to purchase Fractional Club membership at the Time of Sale was motivated by the prospect of a financial gain (i.e., a profit). On the contrary, I think the evidence suggests he and Mrs P would have pressed ahead with the purchase whether or not there had been a breach of Regulation 14(3). And for that reason, I do not think the credit relationship between Mr P and the Lender was unfair to him even if the Supplier had breached Regulation 14(3).

Lastly, the PR says Mr P was pressured by the Supplier into purchasing Fractional Club membership at the Time of Sale. I acknowledge that he may have felt weary after a sales process that went on for a long time. But I've not been given any testimony from him to help me understand what he thinks was said and/or done by the Supplier during the sales presentation that made him feel as if he had no choice but to purchase Fractional Club membership when he simply did not want to. He and Mrs P were also given a 14-day cooling off period and they haven't provided a credible explanation for why they did not cancel their membership during that time. And with all of that being the case, there is insufficient evidence to demonstrate that Mr P made the decision to purchase Fractional Club

membership because his ability to exercise that choice was significantly impaired by pressure from the Supplier.

My provisional decision

In conclusion, given the facts and circumstances of this complaint, I do not think that the Lender acted unfairly or unreasonably when it dealt with Mr P's claims under Section 75, and I am not persuaded that the Lender was party to a credit relationship with Mr P under the Credit Agreement that was unfair to him for the purposes of Section 140A of the CCA. And having taken everything into account, I see no other reason why it would be fair or reasonable to direct the Lender to compensate him."

Responses to the PD

The Lender did not provide anything further for me to consider.

The PR replied on behalf of Mr P. In summary, it says:

- Despite limited direct testimony, the documentation and contemporaneous accounts indicate that the Supplier assured Mr P of rights and returns that did not materialise.
- The Supplier induced Mr P into entering the Fractional Club with materially false statements of fact about the ability to resell the membership, its investment potential, the high-quality standard of the resorts, and availability of holidays Mr P could expect as a member.
- The Supplier breached the contract.
- The relationship between the Lender and Mr P was rendered unfair by the Supplier's conduct.
- The disclaimers in the paperwork don't negate the verbal assurances given at the Time of Sale.
- The Financial Ombudsman Service has upheld similar complaints involving timeshare and fractional ownership products.

What I've decided – and why

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

Having considered everything again, I still reject Mr P's complaint for the reasons I set out in the PD.

I will also deal with the matters raised by the PR in response. In doing so, I remind both parties that my role as an Ombudsman is not to respond to every point that has been made in response. Instead, it is to decide what is fair and reasonable in the circumstances of this specific complaint. So, while I have read the PR's response in full, my findings are confined to what I think are the most salient points.

As I said in the PD, the handwritten note that I think was likely to have been written by the PR while speaking with Mr P shows me that he was unhappy with how his membership functioned as a holiday product. Specifically, he experienced issues with the availability of the accommodation he wanted, the location of available holidays, and that he needed to utilise the external exchange programme. But the note also says he used it for one or two weeks every year, and I haven't been provided with any supporting evidence or testimony to persuade me that the Supplier has not held up its end of the bargain. I appreciate Mr P may

not have always been able to book his first choice of resorts on his preferred dates, but the paperwork makes it clear that holidays are subject to availability. So, I don't agree that the Supplier has failed to provide Mr P with what was promised to him in the Purchase Agreement, so I don't agree the Supplier has breached the contract.

The PR says that the Supplier induced Mr P to enter the Purchase Agreement with materially false statements about resale, investment prospects, standards, and availability. But I've still not been provided with anything from Mr P in his own words about what was said by the Supplier about any of these aspects, apart from the issues he says he experienced with the availability of holidays, which I have already covered.

So overall, as the PR has not provided me with any new testimony or evidence from Mr P to support the allegations made about the events at the Time of Sale, and as I've not been persuaded by any of the PR's arguments in response to the PD, I see no reason to depart from my provisional findings, as outlined above.

My final decision

I don't uphold Mr P's complaint against Mitsubishi HC Capital UK Plc trading as Novuna.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 25 August 2025.

Andrew Anderson
Ombudsman