

## **The complaint**

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

## **What happened**

Mrs G purchased membership of a timeshare (the 'Fractional Club') from a timeshare provider (the 'Supplier') on 01 May 2013 (the 'Time of Sale'). she entered into an agreement with the Supplier to buy 1050 fractional points at a cost of £14,749 (the 'Purchase Agreement').

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

Mrs G paid for her Fractional Club membership by taking finance of £14,749 from the Lender in her name (the 'Credit Agreement').

Mrs G – using a professional representative (the 'PR') – wrote to the Lender on 28 January 2025 (the 'Letter of Complaint') to raise a number of different concerns. As those concerns haven't changed since they were first raised, and as both sides are familiar with them, it isn't necessary to repeat them in detail here beyond the summary above.

The Lender dealt with Mrs G's concerns as a complaint and issued its final response letter on 20 February 2025, rejecting it on every ground.

Mrs G 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 Mrs G at the Time of Sale in breach of Regulation 14(3) of the Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010 (the 'Timeshare Regulations'). And given the impact of that breach on her purchasing decision, the Investigator concluded that the credit relationship between the Lender and Mrs G was rendered unfair to Mrs G 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.

## **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.

The legal and regulatory context that I think is relevant to this complaint is no different to that shared in several hundred ombudsman decisions on very similar complaints. And with that being the case, it is not necessary to set it out here.

### **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 that, I have decided 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 Mrs G as an investment, which, in the circumstances of this complaint, rendered the credit relationship between Mrs G and the Lender unfair to Mrs G 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 this complaint, it is not necessary to make formal findings on all of them because, even if one or more of those aspects ought to succeed, the redress I am currently proposing puts Mrs G in the same or a better position than she would otherwise be in.

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

Having considered the entirety of the credit relationship between Mrs G 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 Mrs G and the Lender.

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

The Lender does not dispute, and I am satisfied, that Mrs G'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 Mrs G says that the Supplier did exactly that at the Time of Sale – saying, in summary, that she was told by the Supplier that Fractional Club membership was the type of investment that would only increase in value.

The term "investment" is not defined in the Timeshare Regulations. But for the purposes of this provisional decision, and by reference to the decided authorities, an investment is a transaction in which money or other property is laid out in the expectation or hope of financial gain or profit.

Mrs G's share in the Allocated Property clearly constituted an investment as it offered Mrs G the prospect of a financial return – whether or not, like all investments, that was more than what she first put into it. But it is important to note at this stage that the fact that Fractional Club membership included an investment element did not, itself, transgress the prohibition in Regulation 14(3). That provision prohibits the *marketing and selling* of a timeshare contract as an investment. It doesn't prohibit the mere existence of an investment element in a timeshare contract or prohibit the marketing and selling of such a timeshare contract *per se*.

In other words, the Timeshare Regulations did not ban products such as the Fractional Club. They just regulated how such products were marketed and sold.

To conclude, therefore, that Fractional Club membership was marketed or sold to Mrs G 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 Mrs G as an investment, i.e. told Mrs G or led Mrs G to believe that Fractional Club membership offered Mrs G 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 Mrs G, the financial value of her 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 Mrs G as an investment.

However, weighing up what happened in practice is, in my view, rarely as simple as looking at the contemporaneous paperwork. And for reasons I'll now come on to, given the facts and circumstances of this complaint, I think the Supplier is likely to have breached Regulation 14(3) of the Timeshare Regulations.

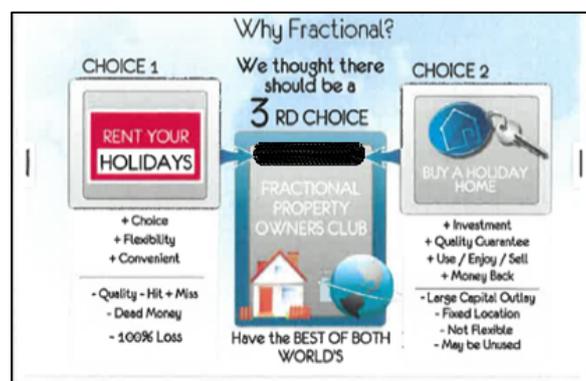
### **How the Supplier marketed and sold the Fractional Club membership**

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 – including a document called “2011 Spain PTM FPOC 1 Practice Slides Manual” (the ‘2011 Fractional Training Manual’).

As I understand it, the 2011 Fractional Training Manual was used throughout the sale of the Supplier’s first version of a product called the Fractional Property Owners Club – which I’ve referred to and will continue to refer to as the Fractional Club. It isn’t entirely clear whether Mrs G would have been shown the slides included in the Manual. But it seems to me to be reasonably indicative of:

- (1) the training the Supplier’s sales representatives would have got before selling Mrs G Fractional Club membership; and
- (2) how the sales representatives would have framed the sale of Fractional Club membership to Mrs G.

Having looked through the manual, my attention is drawn to page 6 (of 41) – which includes the following slide on it:

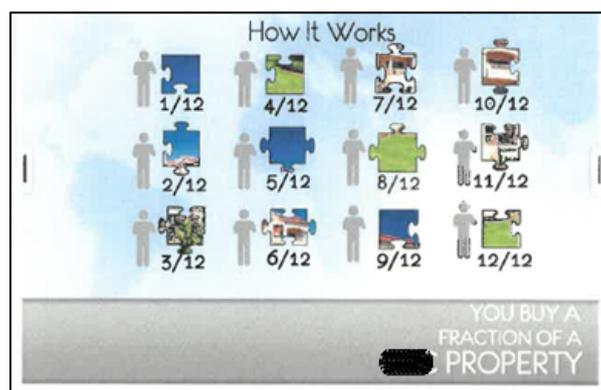


This slide titled “*Why Fractional?*” indicates that sales representatives would have taken Mrs G through three holidaying options along with their positives and negatives:

- (1) “*Rent Your Holidays*”
- (2) “*Buy a Holiday Home*”
- (3) “*The “Best of Both Worlds”*”

It was the first slide in the 2011 Fractional Training Manual to set out any information about Fractional Club membership and I think it suggests that sales representatives were likely to have made the point to Mrs G that membership combined the best of (1) and (2) – which included choice, flexibility, convenience and, significantly, an investment they could use, enjoy and sell before getting money back.

The manual then moved on to two slides (on pages 7 and 8) concerned with how Fractional Club membership worked:





I'm aware that the Supplier says that 90-95% of its time during its sales presentations was focused on holidays rather than the sale of an allocated property. Having looked through the 2011 Fractional Training Manual, it seems to me that there were 10 slides on how Fractional Club membership worked before the slides moved onto to sections titled "Peace of Mind", "Resort Management" and "Which Fractional". And as 5 of the 10 slides look like they focused on holidays, there seems to me to have been a fairly even split during the Supplier's sales presentations between marketing membership of the Fractional Club as a way of buying an interest in property and as a way of taking holidays.

However, even if more time was spent on marketing membership of Fractional Club membership as a way of taking holidays rather than buying an interest in property, as the slides above suggest, in my view, that the Supplier's sales representatives would have probably led prospective members to believe that a share in an allocated property was an investment (after all, that's what the slide titled "Why Fractional" expressly described it as) , I can't see why the Supplier wouldn't have been in breach of Regulation 14(3) in those circumstances.

I acknowledge that there may not have been a 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 Mrs G the financial value of the proprietary interest she was 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)).'*<sup>1</sup> 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.

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<sup>1</sup> 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>

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. Mrs G says, in her own words, that the Supplier positioned membership of the Fractional Club as an investment to Mrs G. And as I've said before, 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 – including Mrs G. And as the slides clearly indicate that the Supplier's sales representative was likely to have led Mrs G 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, I don't find Mrs G either implausible or hard to believe when she says she was told '*we would get the profits form (sic) the sale, which would be more than what we had paid*'. On the contrary, in the absence of evidence to persuade me otherwise, I think that's likely to be what Mrs G was 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.

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

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 Mrs G and the Lender under the Credit Agreement and related Purchase Agreement as the case law on Section 140A makes it clear that regulatory breaches do not automatically create unfairness for the purposes of that provision. Such breaches and their consequences (if there are any) must be considered in the round, rather than in a narrow or technical way.

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

On my reading of Mrs G testimony, the prospect of a financial gain from Fractional Club membership was an important and motivating factor when she decided to go ahead with her purchase. That doesn't mean she was not interested in holidays. Her own testimony demonstrates that she quite clearly was. And that is not surprising given the nature of the product at the centre of this complaint. But as Mrs G says (plausibly in my view) that Fractional Club membership was marketed and sold to Mrs G at the Time of Sale as something that offered them more than just holiday rights, on the balance of probabilities, I think her purchase was motivated by her 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 the more 'standard' type of timeshare available. And with that being the case, I think the Supplier's breach of Regulation 14(3) was material to the decision she ultimately made.

Mrs G has not said or suggested, for example, that she would have pressed ahead with the purchase in question had the Supplier not led Mrs G to believe that Fractional Club membership was an appealing investment opportunity. And as she faced the prospect of borrowing and repaying a substantial sum of money while subjecting herself to long-term financial commitments, had she not been encouraged by the prospect of a financial gain from membership of the Fractional Club, I'm not persuaded that she would have pressed ahead with her purchase regardless.

I have considered carefully the Lender's response to the assessment by our investigator and indeed her response to the Lender's arguments, particularly about the reliability of Mrs G's statement. Having considered it in the round I'm satisfied on balance it is reliable and persuasive. And I don't think the Lender's comments about Mrs G's statement are persuasive and I don't agree with the Lender's characterisation of it in the round.

## **Conclusion**

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

## **Putting things right**

Having found that Mrs G 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 the Consumer was unfair under section 140A of the CCA, I think it would be fair and reasonable to put her back in the position she would have been in had she not purchased the Fractional Club membership (i.e., not entered into the Purchase Agreement), and therefore not entered into the Credit Agreement, provided Mrs G agrees to assign to the Lender her Fractional Points or hold them on trust for the Lender if that can be achieved.

Under this Membership, she had 1050 Fractional Points but she went on to upgrade it with additional borrowing from another lender. And, like this original membership she had to pay annual management charges as part of her upgrade membership. So, had Mrs G not purchased the upgrade, she would have always been responsible to pay an annual management charge of some sort. With that being the case, any refund of the annual management charges paid by Mrs G from the Time of Sale as part of the upgrade should amount only to what she was due to pay under this agreement and not the extra she had to pay as part of the upgrade agreement.

In 2014 (the 'Time of Upgrade'), Mrs G upgraded this membership by trading in her existing Fractional Points for the upgrade membership, paying an additional £5689 and entering into a new purchase agreement for a total of 1370 Fractional Points. And this Credit Agreement remained in place after the upgrade as the upgrade was funded by a different lender through a credit agreement running concurrently with that in this case. Formally, the new purchase agreement superseded the old one, but in my view, it really just supplemented her original membership, rolling over her existing Fractional Points into the upgrade membership. And as I've already said, I don't think the upgrade ended the unfairness under the Credit Agreement and related Purchase Agreement that stemmed from the acts and/or omissions of the Supplier at the Time of Sale given the facts and circumstances of this complaint. So, I think that there were ongoing effects of unfairness from Mrs G's purchase of this original membership and the Credit Agreement that the Lender is answerable for after the upgrade.

However, I recognise that the upgrade in question was paid for by funding from a different Lender, whose responsibility for any acts and/or omissions in the later sales presentation falls outside the scope of this decision. And for that reason, I'm not persuaded the Lender should have to answer for the financial consequences specifically associated with the 320 additional Fractional Points Mrs G purchased in 2014.

So, in my view, the Lender needs to refund a proportion of the management charges payable after the Time of Upgrade that relates to the 1050 of Fractional Points Mrs G held

under the original membership – which, on this occasion, equates to 77% of the annual management charges paid after the Time of Upgrade.

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

- (1) The Lender should refund Mrs G'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 all the annual management charges Mrs G paid, between the Time of Sale and the Time of Upgrade. The Lender should also refund 77% of the upgrade annual management charges she paid after the Time of Upgrade until the membership ended.
- (3) The Lender can deduct:
  - i. The value of any promotional giveaways that Mrs G used or took advantage of;
  - ii. Before the Time of Upgrade, the market value of the holidays\* Mrs G took using the original membership *if* the Points value of the holiday(s) taken amounted to more than the total number of Fractional Points she was entitled to use at the time of the holiday(s). And
  - iii. After the Time of upgrade, the market value of the holidays\* Mrs G took using the upgrade membership if the Points value of the holiday(s) taken amounted to more than the total number of Fractional Points she would have been entitled to use at the time of the holiday(s) as [an] ongoing original membership member. However, this deduction should relate only 77%] of the additional Fractional Points that were required to take the holiday(s) in question.

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

- (4) Simple interest\*\* at 8% per annum should be added to each of the Net Repayments from the date each one was made until the date the Lender settles this complaint.
- (5) The Lender should remove any adverse information recorded on Mrs G's credit file in connection with the Credit Agreement reported within six years of this decision.
- (6) In the event Mrs G's upgrade membership is still in place at the time of this decision (I don't believe this is the case as I understand that the Lender in that complaint has already settled that matter), the Lender must ask the Supplier to reduce the number of Fractional Points she holds by 77% Fractional Points. If the Supplier agrees to do that, then Mrs G must agree to hold the remaining Fractional Points for the benefit of the Lender (or assign them to the Lender if that can be achieved. What's more, the Lender must indemnify Mrs G against 77% of all ongoing liabilities as a result of the upgrade 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 Mrs G took using her 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 her usage.

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

### **My final decision**

For the reasons set out above, my final decision is that uphold this complaint against Mitsubishi HC Capital UK PLC trading as Novuna Personal Finance and it should be redressed as I've described above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs G to accept or reject my decision before 9 February 2026.

Rod Glyn-Thomas  
**Ombudsman**