

## **The complaint**

Mrs P's complaint is, in essence, that Mitsubishi HC Capital UK Plc trading as Novuna Personal Finance acted unfairly and unreasonably by (1) being party to an unfair credit relationship with her 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 P, together with her then husband Mr B, purchased membership of a timeshare (the 'Fractional Club') from a timeshare provider (the 'Supplier') on 15 March 2018 (the 'Time of Sale'). They entered into an agreement with the Supplier to buy 1,360 fractional points at a cost of £16,764 after trading in a trial membership (the 'Purchase Agreement').

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

Mrs P and Mr B paid for their Fractional Club membership by taking a loan of £20,922 from Novuna in Mrs P's sole name (the 'Credit Agreement'). Some of the funds were used to repay an existing loan taken with a different provider to fund their trial membership with the Supplier.

As only Mrs P was named on the Credit Agreement, only she is able to refer a complaint about it to our Service. For ease I will refer to Mrs P only from here on, even where she and Mr B may have been acting jointly or the matter might otherwise apply to Mr B in some way.

Mrs P – using a professional representative ('PR1') – wrote to Novuna on 26 April 2023 (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.

As Novuna did not respond to Mrs P's complaint, it was referred to the Financial Ombudsman Service. By this time, Mrs P was assisted by a different professional representative ('PR2'). The complaint was assessed by an Investigator who, having considered the information on file, did not recommend that it be upheld.

Mrs P disagreed with the Investigator's assessment and asked for an Ombudsman's decision, so 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 published ombudsman decisions on very similar complaints – which can be found on the Financial Ombudsman Service’s website. And with that being the case, it is not necessary to set out that context 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.

Having done that, I have reached the same conclusion as our Investigator in that I do not think this complaint should be upheld and for broadly similar reasons.

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

### **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.

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. Novuna doesn’t dispute that the relevant conditions are met. But for reasons I’ll come on to below, it isn’t necessary to make any formal findings on them here.

It was said in the Letter of Complaint that Fractional Club membership had been misrepresented by the Supplier at the Time of Sale because Mrs P was:

1. Told that she had purchased an investment that would “considerably appreciate in value” when that was not true.
2. Told that she would own a share in a property that would increase in value during the membership term when that was not true.
3. Told that she could sell the timeshare back to the resort or easily sell it at a profit.
4. Made to believe that she would have access to “the holiday apartment” at any time all year round when that was not true.

However, neither points 1 nor 2 strike me as misrepresentations even if such representations had been made by the Supplier (which I make no formal finding on). Telling prospective members that they were investing their money because they were buying a fraction or share of one of the Supplier’s properties was not untrue. And even if the Supplier’s sales representatives went further and suggested that the share in question would increase in value, perhaps considerably so, that sounds like nothing more than a honestly held opinion as there isn’t enough evidence to persuade me that the relevant sales representative(s) said something that, while an opinion, amounted to a statement of fact that they did not hold or could not have reasonably held.

As for points 3 and 4, while it’s *possible* that Fractional Club membership was misrepresented at the Time of Sale for either or both of these reasons, I don’t think it’s *probable*. Neither allegation is given the colour or context I consider necessary to

demonstrating that the Supplier made a false statement of existing fact and/or opinion. The documentation that Mrs P was given (and signed) at the Time of Sale made it clear that the Supplier did not run a “resale” programme and that she was depositing her Fractional Rights – the rights of exclusive use of the Allocated Property – in exchange for her Fractional Points, to exchange for the booking of other holiday resorts. I find it unlikely that the Supplier would’ve made promises of the type suggested in the Letter of Complaint, which would have been so starkly contradictory to the contractual paperwork and demonstrably false.

So, while I recognise that Mrs P and her representatives have concerns about the way in which Fractional Club membership was sold by the Supplier, when looking at the claim under Section 75 of the CCA, I can only consider whether there was a factual and material misrepresentation by the Supplier. For the reasons I’ve set out above, I’m not persuaded that there was. And that means that I don’t think that Novuna acted unreasonably or unfairly when it dealt with this particular Section 75 claim.

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

I’ve already explained why I’m not persuaded that Fractional Club membership was actionably misrepresented by the Supplier at the Time of Sale. But there are other aspects of the sales process that, being the subject of dissatisfaction, I must explore with Section 140A in mind if I’m to consider this complaint in full – which is what I’ve done next.

Having considered the entirety of the credit relationship between Mrs P and Novuna along with all of the circumstances of the complaint, I don’t 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 standard of the Supplier’s commercial conduct – which includes its sales and marketing practices at the Time of Sale along with any relevant training material;
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;
4. The inherent probabilities of the sale given its circumstances; and, when relevant
5. Any existing unfairness from a related credit agreement.

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

#### **The Supplier’s sales & marketing practices at the Time of Sale**

Mrs P’s complaint about Novuna being party to an unfair credit relationship was made for several reasons.

PR1 said, for instance, that the right checks weren’t carried out before Novuna lent to Mrs P. I haven’t seen anything to persuade me that was the case in this complaint given its circumstances. But even if I were to find that Novuna failed to do everything it should have when it agreed to lend (and I make no such finding), I would have to be satisfied that the money lent to Mrs P was actually unaffordable before also concluding that she lost out as a result and then consider whether the credit relationship with Novuna was unfair to her for this reason. But from the information provided, I am not persuaded that the lending was unaffordable for Mrs P.

Connected to this is the suggestion that the Credit Agreement was arranged by an

unauthorised credit broker, the upshot of which is to suggest that Novuna wasn't permitted to enforce the Credit Agreement. However, it looks to me like Mrs P knew, amongst other things, how much she was borrowing and repaying each month, who she was borrowing from and that she was borrowing money to pay for Fractional Club membership. And as the lending doesn't look like it was unaffordable for her, even if the Credit Agreement was arranged by a broker that didn't have the necessary permission to do so (which I make no formal finding on), I can't see why that led to Mrs P suffering a financial loss – such that I can say that the credit relationship in question was unfair on her as a result. And with that being the case, I'm not persuaded that it would be fair or reasonable to tell Novuna to compensate her, even if the loan wasn't arranged properly.

Overall, therefore, I don't think that Mrs P's credit relationship with Novuna was rendered unfair to her under Section 140A for either of the reasons above. But there is another reason, perhaps the main reason, why Mrs P's representatives say the credit relationship with Novuna was unfair to her. And that's the suggestion that Fractional Club membership was marketed and sold to her as an investment in breach of prohibition against selling timeshares in that way.

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

Novuna does not dispute, and I am satisfied, that Mrs P'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 P's representatives say that the Supplier did exactly that at the Time of Sale – saying, in summary, that Mrs P 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 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.

A share in the Allocated Property clearly constituted an investment as it offered Mrs P 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 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 her as an investment, i.e. told her or led her to believe that Fractional Club membership offered her the prospect of a financial gain (i.e., a profit) given the facts and circumstances of *this* complaint.

There is competing evidence in this complaint as to whether Fractional Club membership was marketed and/or sold by the Supplier at the Time of Sale as an investment in breach of regulation 14(3) of the Timeshare Regulations.

On the one hand, it is clear 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 P, 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.

On the other hand, I acknowledge that the Supplier's sales process left open the possibility that the sales representative may have positioned Fractional Club membership as an investment. So, I accept that it's equally possible that Fractional Club membership was marketed and sold to Mrs P as an investment in breach of Regulation 14(3).

However, whether or not there was a breach of the relevant prohibition by the Supplier is not ultimately determinative of the outcome in this complaint for reasons I will come on to shortly. And with that being the case, it's not necessary to make a formal finding on that particular issue for the purposes of this decision.

Was the credit relationship between Novuna and Mrs P rendered unfair?

Having found that it was possible 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 P and Novuna 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 me that, if I am to conclude that a breach of Regulation 14(3) led to a credit relationship between Mrs P and Novuna that was unfair to her and warranted relief as a result, whether the Supplier's breach of Regulation 14(3) led her to enter into the Purchase Agreement and the Credit Agreement is an important consideration.

To help me decide this point, I've carefully considered what Mrs P has said in the course of her complaint about how the membership was sold to her and her motivation for purchasing it.

I would note first of all that the evidence in this respect is quite limited. Within the Letter of Complaint, it is said that Mrs P was told that she had purchased an investment that would increase in value. There was no further detail underpinning these statements within the Letter of Complaint, which are rather generic in nature. In fact, such assertions were made in an identical fashion by PR1 in a number of other complaints.

When referring the complaint to us, PR2 included a statement from Mrs P with her recollections from the Time of Sale. In response to our Investigator's view, PR2 highlighted that within her statement, Mrs P said:

*"[The Supplier] told me that after 19 years we would own a fractional amount of a property ... and could sell this at any time after 19 years."*

I do not agree with PR2's point that this shows the Supplier marketed and sold Fractional Club membership to Mrs P as an investment. She makes no reference to hoping, or

expecting, to make a financial gain from such ownership. In any case, even if that could be inferred from what Mrs P has said, as set out above I have accepted the possibility that the Supplier positioned the membership as an investment to her. In order to uphold the complaint, I would need to find that such positioning was material to her decision to purchase the membership. Like our Investigator, I do not think it was.

Mrs P's statement as a whole provides little more by way of detail as to either what the Supplier told her about the investment element or what motivated her purchase. Ultimately the limited comments therein do not persuade me that 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. I accept she may well have been interested in a share in the Allocated Property, which would not be surprising given the nature of the product at the centre of this complaint. But I can see that she had a longstanding interest in the holiday options offered by the Supplier – having purchased a trial membership already and indeed having bought a Fractional Club membership some years prior (only to cancel it during the cooling-off period). I think it is more likely than not that the attraction of the holiday options meant Mrs P would always have proceeded to purchase the membership, whether or not the investment element had been promoted to her by the Supplier.

I should also note that within its response to our Investigator's view, PR2 commented that under Section 140B (9) of the CCA, the burden of proof falls on Novuna to disprove the allegation that its relationship with Mrs P was unfair. That does not mean, though, that Novuna – or I – should take a claim at face value. There remains an onus on Mrs P to provide some evidence for the claim she is making, despite the overall burden of proof resting with Novuna, as was set out in the judgment in *Smith and another v Royal Bank of Scotland plc* [2023] UKSC 34 (at paragraph 40).

Weighing up all of the evidence to consider this claim, I am not persuaded that Mrs 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), even if the Supplier marketed or sold the Fractional Club membership to her as an investment in breach of Regulation 14(3) of the Timeshare Regulations. On the contrary, I think the evidence suggests she would have pressed ahead with her 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 Mrs P and Novuna was unfair to her even if the Supplier had breached Regulation 14(3).

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

PR1 said that Mrs P was not given sufficient information at the Time of Sale by the Supplier about the ongoing costs of Fractional Club membership. They also said that the contractual terms governing the ongoing costs of membership and the consequences of not meeting those costs were unfair contract terms.

As I've already indicated, the case law on Section 140A makes it clear that it does not automatically follow that regulatory breaches create unfairness for the purposes of the unfair relationship provisions. The extent to which such mistakes render a credit relationship unfair must also be determined according to their impact on the complainant.

I acknowledge that it is also possible that the Supplier did not give Mrs P sufficient information, in good time, on the various charges she could have been subject to as a Fractional Club member in order to satisfy the requirements of Regulation 12 of the Timeshare Regulations (which was concerned with the provision of 'key information'). But even if that was the case, I cannot see that the ongoing costs of membership were applied unfairly in practice. And as neither Mrs P nor her representatives have persuaded me that she would not have pressed ahead with her purchase had the finer details of the Fractional

Club's ongoing costs been disclosed by the Supplier in compliance with Regulation 12, I cannot see why any failings in that regard are likely to be material to the outcome of this complaint given its fact and circumstances.

As for the argument that there were one or more unfair contract terms in the Purchase Agreement, I can't see that any such terms were operated unfairly against Mrs P in practice, nor that any such terms led her to behave in a certain way to her detriment. And with that being the case, I'm not persuaded that any of the terms governing Fractional Club membership are likely to have led to an unfairness that warrants a remedy.

## **Conclusion**

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In conclusion, given the facts and circumstances of this complaint, I do not think that Novuna acted unfairly or unreasonably when it dealt with Mrs P's Section 75 claim, and I am not persuaded that Novuna was party to a credit relationship with her under the Credit Agreement that was unfair to her 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 Novuna to compensate her.

## **My final decision**

For the reasons I've explained, I do not uphold this complaint.

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

Ben Jennings  
**Ombudsman**