DRN-5864326

The complaint

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

What happened

Mr and Mrs G were the members of a timeshare provider (the 'Supplier') – having purchased a number of products from it over time. But the product at the centre of this complaint is their membership of a timeshare that I'll call the 'Fractional Club' – which they bought on 29 December 2011 (the 'Time of Sale'). They entered into an agreement with the Supplier to buy 1,050 fractional points at a cost of £17,500[1] (the 'Purchase Agreement').

Fractional Club membership was asset backed – which meant it gave Mr and Mrs G 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.

Mr and Mrs G paid for their Fractional Club membership by taking finance of £10,000 from the Lender (the 'Credit Agreement') in Mr G's sole name, making him the only (and sole) complainant in this case.

Mr G – using a professional representative (the 'PR') – wrote to the Lender on 20 December 2021 (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 some of Mr G's concerns as a complaint and issued a final response letter on 8 June 2022, rejecting those concerns.

The complaint was then referred to the Financial Ombudsman Service. It was assessed by an Investigator who, having considered the information on file and forming a view as to what aspects of it we had the jurisdiction to consider, ultimately rejected it.

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

I considered the matter and issued a provisional decision (the 'PD') on 18 September 2025. In that decision, 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, I don't currently think this complaint should be upheld.

[1] Reduced to £10,000 after a trade in allowance given of £7,500

However, before I explain why, I want to make it clear that my role as an Ombudsman isn't to address every single point that has been made to date. Instead, it's to decide what's fair and reasonable in the circumstances of this complaint. So, if I haven't commented on, or referred to, something that either party has said, that doesn't mean I haven't 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. The Lender doesn't dispute that the relevant conditions are met. But I don't think Mr G is able to make a successful claim under Section 75 (for misrepresentation) for reasons I'll now explain.

At the time Mr G notified the Lender of his claim, in December 2021, I think that claim would have been time-barred under the Limitation Act 1980 ("LA").

The LA sets out limitation periods (time limits) for bringing various types of legal claim. If a claim is brought too late, the respondent is likely to have a complete defence to the claim on that basis. For claims relating to misrepresentation, the limit normally runs six years from the date a person suffers damage as a result of the misrepresentation – such as entering into a contract and incurring liabilities they wouldn't have otherwise.

This means the time to bring a claim for misrepresentation would have been six years from the Time of Sale, so the limitation period for such a claim would have expired in December 2017, four years before Mr G complained. However, the judgment in Scotland & Reast explains that, even if a limitation period has expired for a standalone misrepresentation claim, relevant misrepresentations that could be attributed to the Lender can be considered as part of the assessment of the unfairness of the credit relationship. So, I've gone on to consider those matters below.

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 consumers a right of recourse against a lender. So, it isn't necessary to repeat that here.

Mr G says that he couldn't holiday where and when he wanted to. Notwithstanding it's unclear when this alleged breach occurred in this case, and this is necessary information to have when considering whether the Lender might have a defence under the LA, just as it did against Mr G's concerns of misrepresentation, I accept it's possible that the alleged breach occurred within six years of the date Mr G notified the Lender of his claim. But I don't find it necessary to make a finding on this point.

Mr G says that he couldn't holiday where and when he wanted to – which, on my reading of the complaint, suggests that he considers that the Supplier wasn't living up to its end of the bargain, and had breached the Purchase Agreement. Like any holiday accommodation, availability wasn't unlimited – given the higher demand at peak times, like school holidays, for instance. Some of the sales paperwork signed by Mr G states that the availability of holidays was/is subject to demand. I accept that he may not have been able to take certain holidays, but I haven't seen enough to persuade me that the Supplier had breached the terms of the Purchase Agreement.

The PR suggests that the Supplier breached the Purchase Agreement because it went into liquidation in December 2020. But, in light of the Supplier's apparent liquidation, neither Mr G nor the PR have said, suggested or provided evidence to demonstrate that Mr G is no longer:

1. a member of the Fractional Club;
2. able to use his Fractional Club membership to holiday in the same way he could initially; and
3. entitled to a share in the net sales proceeds of the Allocated Property when his Fractional Club membership ends.

Overall, therefore, from the evidence I've seen to date, I don't think the Lender is liable to pay Mr G any compensation for a breach of contract by the Supplier.

Section 140A of the CCA: did the Lender 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 Mr G and the Lender 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've 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've then considered the impact of these on the fairness of the credit relationship between Mr G and the Lender.

The Supplier's sales & marketing practices at the Time of Sale

Mr G's complaint about the Lender being party to an unfair credit relationship was and is made for several reasons.

The PR says, for instance that:

1. the right checks weren't carried out before the Lender lent to Mr G; and
2. Mr G was pressured by the Supplier into purchasing Fractional Club membership at the Time of Sale.

However, as things currently stand, neither of these strike me as reasons why this complaint should succeed.

I haven't seen anything to persuade me that the right checks weren't carried out by the Lender given this complaint's circumstances. But even if I were to find that the Lender 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 Mr G was actually unaffordable, before also concluding that he lost out as a result, and then consider whether the credit relationship with the Lender was unfair to him for this reason. But from the information provided, I'm not satisfied that the lending was unaffordable for Mr G.

I acknowledge that Mr G may have felt weary after a sales process that went on for a long time. But he says little about what 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 didn't want to. He was also given a 14-day cooling off period and he hasn't provided a credible explanation for why he didn't cancel his membership during that time. And with all of that being the case, there is insufficient evidence to demonstrate that Mr G made the decision to purchase Fractional Club membership because his ability to exercise that choice was significantly impaired by pressure from the Supplier.

Overall, therefore, I don't think that Mr G's credit relationship with the Lender was rendered unfair to him under Section 140A for any of the reasons above. But there is another reason, perhaps the main reason, why the PR now says the credit relationship with the Lender was unfair to him. And that's the suggestion that Fractional Club membership was marketed and sold to him 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

A share in the Allocated Property clearly constituted an investment as it offered Mr G the prospect of a financial return – whether or not, like all investments, that was more than what he first put into it. But it's important to note at this stage that the fact that Fractional Club membership included an investment element didn't, 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 didn't 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 G as an investment in breach of Regulation 14(3), I've to be persuaded that it was more likely than not that the Supplier marketed and/or sold membership to him as an investment, i.e. told him or led him to believe that Fractional Club membership offered him 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's 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 Mr G, 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 Mr G as an investment in breach of Regulation 14(3).

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

Was the credit relationship between the Lender and the Consumer 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 Mr 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 don't 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'm to conclude that a breach of Regulation 14(3) led to a credit relationship between Mr G and the Lender that was unfair to him and warranted relief as a result, whether the Supplier's breach of Regulation 14(3) led him to enter into the Purchase Agreement and the Credit Agreement is an important consideration.

But on my reading of the evidence before me, the prospect of a financial gain from Fractional Club membership wasn't an important and motivating factor when Mr G decided to go ahead with his purchase. I say that having read and considered Mr G's testimony.

This was compiled by the PR and dated 26 January 2021.

The first thing for me to say is that Mr G's testimony dates to around nine years after the events in question. So it's difficult to attach much weight to it compared to say a statement written nearer the relevant time when memories may have been fresher and freer from the potential influence of later events. But in any event I'm not persuaded that Mr G's testimony supports the PR's claim that Fractional Club membership was marketed and sold to him as an investment.

The testimony sets out Mr G's recollections of his entire relationship with the Supplier between 1999 and 2021. As regards his purchase of the Fractional Club at the Time of Sale Mr G says:

> *"On the 29th December 2011, we made a purchase of a…unit in the Fractional system. We made this purchase after being invited on another free holiday with [the Supplier] on the condition that we attended a sales meeting. Therefore, whilst on this holiday at [resort], we were approached by a representative from* [the Supplier] *and asked to attend a sales meeting. At this meeting, we were told about the benefits of upgrading [our existing] timeshare into the Fractional system. We had been asked previously by* [the Supplier] *to upgrade our points, however, due to living* [elsewhere] *for a period of time, we decline that offer. We were told via a letter that* [our existing] *Membership had in fact closed, and the representatives were rather surprised that we still owned* [our existing] *Membership. We were told that we therefore must upgrade our membership, and the best way to do this would be to invest in a property with* [the Supplier]*. We were told that through purchasing a Fractionals property with* [the Supplier]*, it would be an investment which within 19 years would be resold and we would then be free of this timeshare. We almost purchased a property* [elsewhere*], however, after a persistent meeting, we decided to enter into a Fractional purchase with* [the Supplier]*."*

I accept that Mr G, in the above, says that the Supplier told him that the purchase would be

an investment. But I can't see that this is any more than a description of how the Fractional Club worked – it certainly doesn't suggest that a potential profit was a motivating factor for him.

And having considered everything Mr G said in the above it seems to me that he entered into the membership because of what he said he was advised about the status of his existing membership. That doesn't mean he wasn't interested in a share in the Allocated Property. After all, that wouldn't be surprising given the nature of the product at the centre of this complaint. But as I've said, I don't think this was a motivation for him.

Furthermore I think that a further motivating factor for Mr G to enter into the membership was the type and quality of holiday he understood that membership would allow him to take going forward given that in the penultimate paragraph of his testimony he says:

> *"Since purchasing this timeshare with [the Supplier] we have found that the there is a complete lack of availability when attempting to book holidays, as resorts are always fully booked - this is not the flexibility we promised. The resorts are also no longer exclusive as non-members are able to book holidays online - this is not the exclusivity we were promised. The maintenance fees for this timeshare have increased over the years and due to retirement and therefore reduced income, these fees are no longer affordable."*

So as Mr G doesn't persuade me that his purchase was motivated by his share in the Allocated Property and the possibility of a profit, I don't think a breach of Regulation 14(3) by the Supplier was likely to have been material to the decision he ultimately made.

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'm not persuaded that Mr G'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 would have pressed ahead with his purchase whether or not there had been a breach of Regulation 14(3). And for that reason, I don't think the credit relationship between Mr G and the Lender was unfair to him even if the Supplier had breached Regulation 14(3).

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

The PR says that Mr G wasn't given sufficient information at the Time of Sale by the Supplier in order to make an informed choice.

It isn't clear what information the PR thinks the Supplier failed to provide at the Time of Sale. But as I've already indicated, the case law on Section 140A makes it clear that it doesn't 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.

So, while I acknowledge that it's also possible that the Supplier didn't give Mr G sufficient information, in good time, in order to satisfy the requirements of Regulation 12 of the Timeshare Regulations (which was concerned with the provision of 'key information'), even if that was the case, neither Mr G nor the PR have persuaded me that he was deprived of information that would have led him to make a different purchasing decision at the Time of Sale. And with that being the case, even if there were information failings (which I make no formal finding on), I can't see why they led to a financial loss.

In conclusion, given the facts and circumstances of this complaint, I didn't think that the Lender acted unfairly or unreasonably when it dealt with Mr G's Section 75 claims, and I wasn't persuaded that the Lender was party to a credit relationship with him 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 could see no other reason why it would be fair or reasonable to direct the Lender to compensate him.

Following my provisional decision, I also communicated how I wasn't persuaded that Mr G's credit relationship with the Lender was unfair to him for reasons relating to the commission arrangements between it and the Supplier.

The Lender responded to the PD and accepted it.

The PR responded to the PD and didn't accept it.

The PR responded to my further communication (detailing how I wasn't persuaded that Mr G's credit relationship with the Lender was unfair to him for reasons relating to the commission arrangements between it and the Supplier) to say that it wasn't challenging it.

Having received the relevant responses from both parties, I'm now finalising my decision.

The legal and regulatory context

In considering what's fair and reasonable in all the circumstances of the complaint, I'm 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, in many ways. 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 isn't necessary to set out that context in detail here. But I would add that the following regulatory rules/guidance are also relevant:

<u>The Office of Fair Trading's Irresponsible Lending Guidance – 31 March 2010</u>

The primary purpose of this guidance was to provide greater clarity for businesses and consumer representatives as to the business practices that the Office of Fair Trading (the 'OFT') thought might have constituted irresponsible lending for the purposes of Section 25(2B) of the CCA. Below are the most relevant paragraphs as they were at the relevant time:

- Paragraph 2.2
- Paragraph 2.3
- Paragraph 5.5

The OFT's Guidance for Credit Brokers and Intermediaries - 24 November 2011

The primary purpose of this guidance was to provide clarity for credit brokers and credit intermediaries as to the standards expected of them by the OFT when they dealt with actual or prospective borrowers. Below are the most relevant paragraphs as they were at the relevant time:

- Paragraph 2.2
- Paragraph 3.7
- Paragraph 4.8

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.

Following the responses from both parties, I've considered the case afresh and having done so, I've reached the same decision as that which I outlined in my provisional findings, for broadly the same reasons.

Again, my role as an Ombudsman isn't to address every single point which has been made to date, but to decide what's fair and reasonable in the circumstances of this complaint. If I haven't commented on, or referred to, something that either party has said, this doesn't mean I haven't considered it.

Rather, I've focused here on addressing what I consider to be the key issues in deciding this complaint and explaining the reasons for reaching my final decision.

The PR's further comments in response to the PD relate to the issue of whether the credit relationship between Mr G and the Lender was unfair. In particular, the PR has provided further comments in relation to whether the membership was sold to Mr G as an investment at the Time of Sale.

As outlined in my PD, the PR originally raised various other points of complaint, all of which I addressed at that time. But they didn't make any further comments in relation to those in their response to my PD. Indeed, they haven't said they disagree with any of my provisional conclusions in relation to those other points. And since I haven't been provided with anything more in relation to those other points by either party, I see no reason to change my conclusions in relation to them as set out in my PD. So, I'll focus here on the PR's points raised in response.

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

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

Included in the PR's response to my PD was an oral hearing request along with the offer to produce a sworn affidavit. Oral hearings are something that I can direct happen under DISP 3.5.5. However, the Financial Ombudsman Service is set up to decide complaints informally and it's for me as the decision maker to determine what evidence I think I need to determine what's a fair and reasonable outcome to a complaint. Having considered everything, I don't think I need to hold an oral hearing to fairly determine this complaint.

This is because both parties have already provided lengthy submissions. In this case, I've testimony from Mr G, other evidence, including the documents from the sale, and full submissions from the PR and the Lender to decide what I think was most likely to have happened. I'm satisfied I'm able to weigh up what Mr G had said against the available evidence and arguments to determine what I think happened on the balance of probabilities without the need for an oral hearing. And as it's in everyone's interest to resolve this complaint as soon as possible, to grant a hearing at such a late stage would inevitably prolong the resolution of this case.

I understand that the PR also offers to have Mr G provide a sworn affidavit. But I must remind them that we don't have strict evidential requirements. We aren't expected to decide complaints only after receiving sworn evidence. And our jurisdiction is investigative rather than adversarial. I remain of the view that the information we have on file is enough to cover all the issues I need to consider to reach a fair decision. And as I've considered everything on file, including the specific points raised by the PR as part of its request, I'm of the view that a hearing request and/or a sworn affidavit aren't required.

As I explained in my PD, although I found there was a possibility that the Supplier breached Regulation 14(3) at the Time of Sale, I wasn't persuaded that the evidence suggested that Mr G purchased Fractional Club membership in whole or in part down to any breach of Regulation 14(3).

And as I already said in my PD, it seems from what Mr G has had to say that he was persuaded to purchase due to what he understood would be the quality, exclusivity and availability of the holidays Fractional Club membership would give him and the fact that its terms weren't into perpetuity, i.e. he would *"be free of* [the] *timeshare* [within 19 years]*"*.

Here, the PR has stated that I've been inconsistent with my approach compared to previous decisions issued by the service, and has provided examples it feels demonstrates this. But my decision is based on consideration of Mr G's specific circumstances. Each complaint turns on its own facts; an ombudsman's decision on how one timeshare sale occurred doesn't determine his, or any other ombudsman's, decisions about the facts of other sales at different times to different purchases.

The PR has also reiterated that the judgment handed down in *Shawbrook & BPF v FOS* asserted that the relevant question in this circumstance is whether the breach of regulation 14(3) was a material factor in the decision to purchase, not whether it was the only factor or principal one. It feels that the testimony Mr G has provided demonstrates that this was the case. But, as I explained in my provisional decision, I'm not persuaded from the testimony that Mr G has adequately demonstrated that the promise of profit was a motivating factor to his decision to move ahead with the purchase – principal or otherwise.

I accept that within the PR's new submissions Mr G has provided a statement dated 1 October 2025 under cover of which he says his and Mrs G's purchase was motivated by the prospect of a financial gain. However, notwithstanding that within this statement Mr G again says he was attracted by what he understood would be the quality, exclusivity and availability of the holidays Fractional Club membership would give him and the fact that its terms weren't into perpetuity, there is a real risk that this statement has been coloured by the Investigator's view and/or the outcome in *Shawbrook & BPF v FOS* and/or my Provisional Decision. And, on balance, the timing in which this evidence has been provided makes me conclude that I can place little weight on it.

So, ultimately, for the above reasons, along with those I already explained in my PD, I remain unpersuaded that any breach of Regulation 14(3) was material to Mr and Mrs G's purchasing decision.

So, as I said before, even if the Supplier had marketed or sold the membership as an investment in breach of Regulation 14(3) (which I still make no finding on here), I'm not persuaded Mr and Mrs G's decision to make the purchase was motivated by the prospect of a financial gain. So, I still don't think the credit relationship between Mr G and the Lender was unfair to him for this reason.

Other points

In response to my PD the PR says I discounted Mr G's 2021 testimony on the grounds *"of the passage of time"* and I did so despite him providing *"supplementary clarification"*.

I accept that in my PD I said it was difficult to attach much weight to Mr G's 2021 testimony given how long after the events in question it was compiled (around nine years). But I also said that regardless of my view in this respect I wasn't persuaded that this testimony supported the claim that Fractional Club membership was marketed and sold to Mr G as an investment. In other words, regardless of any concerns I might have had about the weight I could fairly and reasonably attach to Mr G's 2021 statement, this wasn't material to my findings.

I would also add that given Mr G's supplementary clarification wasn't compiled and provided until after I had issued my provisional findings I don't understand how the PR can 'argue' I ignored that clarification.

Conclusion

In conclusion, given the facts and circumstances of this complaint, I don't think that the Lender acted unfairly or unreasonably when it dealt with Mr G's Section 75 claims, and I'm not persuaded that the Lender was party to a credit relationship with him 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.

My final decision

For the reasons set out above, I don't uphold this complaint.

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

Peter Cook
Ombudsman