

## **The complaint**

Mr P'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 a claim under Section 75 of the CCA.

## **What happened**

Mr P, along with his partner purchased membership of a timeshare (the 'Fractional Club') from a timeshare provider (the 'Supplier') on 18 June 2018 (the 'Time of Sale'). He entered into an agreement with the Supplier to buy 1,360 fractional points at a cost of £21,159 (the 'Purchase Agreement'). But after trading in his existing trial membership (the 'Trial Membership'), he ended up paying £16,764 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 his Purchase Agreement (the 'Allocated Property') after his membership term ends.

Mr P paid for his Fractional Club membership by taking finance of £21,041 from the Lender (the 'Credit Agreement'). £4,277 of this was paid by the Supplier to another lender who had financed his trial membership that was traded in.

Mr P – using a professional representative (the 'PR') – wrote to the Lender on 26 February 2024 (the 'Letter of Complaint') to raise a number of different concerns. Since then the PR has raised some further matters it says are relevant to this outcome of the complaint. As both sides are familiar with the concerns raised, it isn't necessary to repeat them in detail here beyond the summary above.

The Lender dealt with Mr P's concerns as a complaint and issued its final response letter on 17 July 2024 rejecting it on every ground.

Mr P then referred the complaint to the Financial Ombudsman Service.

I issued a provisional decision in August 2025 explaining why I thought Mr P's complaint should be upheld and setting out what the Lender needed to do to put things right.

Mr P agreed with my provisional decision.

The Lender did not agree and provided some comments and evidence it wished for me to consider.

I am now therefore finalising my decision.

## **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, 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 is not necessary to set out that context in detail 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 considered all of the available evidence and the Lender's comments provided in response to my provisional decision, I think that this complaint should be upheld because the Supplier breached Regulation 14(3) of the Timeshare Regulations by marketing and/or selling Signature Collection membership to Mr P as an investment, which, in the circumstances of this complaint, rendered the credit relationship between him and the Lender unfair to him for the purposes of Section 140A of the CCA.

However, before I explain why, I want to make it clear that my role as an Ombudsman is not to address every single point that has been made to date. Instead, it is to decide what is fair and reasonable in the circumstances of this complaint. So, while I recognise that there are a number of aspects to Mr P complaint, it isn't necessary to make formal findings on all of them. This includes the allegation(s) that:

- The decision to lend was irresponsible because the Lender didn't carry out the right creditworthiness assessment.
- The Credit Agreement was unenforceable because it was not arranged by a credit broker regulated by the Financial Conduct Authority (the 'FCA') to carry out such an activity.

Because, even if those aspect(s) of the complaint ought to succeed, the redress I'm currently proposing puts Mr P in the same or a better position than he would be if the redress was limited to those other matters.

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.

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

As Section 140A of the CCA is relevant law, I do have to consider it. So, in determining what is fair and reasonable in all the circumstances of the case, I will consider whether the credit relationship between Mr P and the Lender was unfair.

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 several 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 Signature Collection 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 him 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.”

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

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

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

- 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; and
- The provision of information by the Supplier at the Time of Sale, including the contractual documentation and disclaimers made by the Supplier;
- Evidence provided by both parties on what was likely to have been said and/or done at the Time of Sale;
- The inherent probabilities of the sale given its circumstances.

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

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

The Lender does not dispute, and I am satisfied, that Mr P Signature Collection 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 Signature Collection membership as an investment. This is what the provision said at the Time of Sale:

“A trader must not market or sell a proposed timeshare contract or long-term holiday product

contract as an investment if the proposed contract would be a regulated contract.”

But Mr P say that the Supplier did exactly that at the Time of Sale – saying the following during the course of this complaint:

“We were told that we could buy into the current facility and use this as a 17 year investment”

Mr P allege(s), therefore, that the Supplier breached Regulation 14(3) at the Time of Sale.

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 P’s share in the Allocated Property clearly, in my view, constituted an investment as it offered him the prospect of a financial return – whether or not, like all investments, that was more than what he first put into it. But the fact that Signature Collection 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. He just regulated how such products were marketed and sold.

To conclude, therefore, that Signature Collection 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 him as an investment, i.e. told him or led him to believe that Signature Collection membership offered him 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 Signature Collection 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 him. There were, for instance, disclaimers in the contemporaneous paperwork that state that Signature Collection membership was not sold to Mr P as an investment.

However, weighing up what happened in practice is, in my view, rarely as simple as looking at the contemporaneous paperwork, especially as the paperwork was provided to customers after any sales presentation. And there are a number of strands to Mr P allegation that the Supplier breached Regulation 14(3) at the Time of Sale, including (1) that membership of the Signature Collection was expressly described as an “investment” in several different contexts and (2) that membership of the Signature Collection could make him a financial gain and/or would retain or increase in value.

So, I have considered:

(1) whether it is more likely than not that the Supplier, at the Time of Sale, sold or marketed membership of the Signature Collection as an investment, i.e. told Mr P or led him to believe during the marketing and/or sales process that membership of the Signature Collection was an investment and/or offered him the prospect of a financial gain (i.e., a profit); and, in turn (2) whether the Supplier’s actions constitute a breach of Regulation 14(3).

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

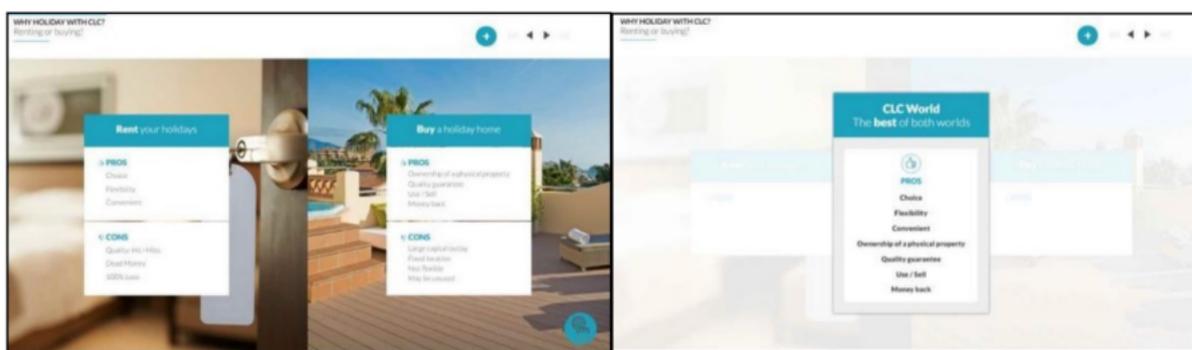
### How the Supplier marketed and sold the Fractional Club membership

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 titled 2017 SPAIN FPOC SALES TRAINING MANUAL \*(the 2017 Fractional Training Manual")

As I understand it, the 2017 Fractional Training Manual was used from November 2016 onwards during the sale of the Supplier's second version of the Fractional Property Owners Club (which I will continue to refer to as simply the Fractional Club) – which was the version Mr P appears to have purchased. It is not entirely clear whether Mr P 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 Mr P's Fractional Club membership; and
- (2) how the sales representatives would have framed the sale of Fractional Club membership to Mr P.

Having looked through the Manual, my attention is drawn first to page 19 (of 74) – which includes two slides called "Why holiday with [the Supplier]? Renting or buying?".



They were the first slides in the Manual that seem to me to set out any information about Fractional Club membership, albeit without expressly referring to the Fractional Club, because they suggest that sales representatives were likely to have made the point to Mr P that holidaying with the Supplier combined the best of (1) and (2), including, amongst other things, ownership of a physical property and money back – which were benefits that were only front and centre of Fractional Club membership.

From the off, therefore, it seems likely that sales representatives would have demonstrated that there were financial advantages to Fractional Club membership rather than being a member of a 'standard' timeshare.

Indeed, the slides above presented a very similar prospect to that presented in a slide used in one of the Supplier's earlier training manuals that was used to help it sell the first version of Fractional Property Owners Club:



All three indicate that sales representatives would have taken prospective members 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"

I acknowledge that the slides incorporated into the 2017 Fractional Training Manual don't include express reference to the 'investment' benefit of Fractional Club membership. But they allude to much the same concept, namely that Fractional Club membership combined the best aspects of taking 'normal' holidays and purchasing a holiday home. Further, for the reasons I will come onto, although the word 'investment' did not appear in the 2017 Fractional Training Manual, I think the idea that Fractional Club membership offered the same benefits as a purchasing an investment property did form part of the sales process.

One of those advantages referred to in the slides on page 19 of the 2017 Fractional Training Manual is the "ownership of a physical property". And as an owner's equity in his property is built over time as the value of the asset increases relative to the size of any mortgage secured against it, this particular advantage of Fractional Club membership was portrayed in terms that played on the opportunity ownership gave prospective members of the Fractional Club to accumulate wealth in a similar way, especially when combined with the phrase "money back".

When the Manual moved on to describe how membership of the Fractional Club worked between pages 26 and 36, one of the major benefits of Fractional Club membership was described on page 35 as:

"A major benefit is that after 19 years of fantastic holidays, the property in which you own a fraction is sold and you will receive your share of the sale proceeds according to the number of fractions owned."

And on page 36 there were notes that encouraged sales representatives to summarise this benefit in the following way:

"So really FPOC equals a passport to fantastic holidays for 19 years with a return at the end of that period. When was the last time you went on holiday and got some money back?"

After discussing some of the other aspects of membership, such as the different resorts available to members, page 53 of the Manual indicates that sales representatives would have moved onto a cost comparison between "renting" holidays and "owning" them. Sales representatives were encouraged to tell prospective members how much they would spend

over 19 years (i.e., the length of Fractional Club membership) on holidays with “no return” in contrast to spending the same amount of money as Fractional Club members – thus demonstrating the financial advantages of membership.

Page 53 included the following slides and accompanying notes:



“We aren’t only talking about 10 years, we are talking about 19 years. So in actual fact, with the travel agent over 19 years you would have spent over £... with no return.

However, with [the Supplier] you would still have spent the same £... because once your fraction is paid for, the remaining years of holiday accommodation is taken care of.

We also agreed that you would get nothing back from the travel agent at the end of this holiday period. Remember with your fraction at the end of the 19 year period, you will get some money back from the sale, so even if you only say £5,000, it would still be more than you would get renting your holidays from a travel agent wouldn’t it.”

I acknowledge that the slides above set out a “return” that is less than the total cost of the holidays and the “initial outlay”. But that was just an example and, given the way in which it was positioned in the 2017 Fractional Training Manual, the language did leave open the possibility that the return could be equal to if not more than the initial outlay. Furthermore, the slides above represent Fractional Club membership as:

- (1) The right to receive holiday rights for 19 years whose market value significantly exceeds the costs to a Fractional Club member; plus
- (1) A significant financial return at the end of the membership term.

And to consumers (like Mr P) who were looking to buy holidays anyway, the comparison the slides make between the costs of Fractional Club membership and the higher cost of buying holidays on the open market was likely to have suggested to him that the financial return was in fact an overall profit.

What’s more, I think the Supplier’s sales representatives were encouraged to make prospective Fractional Club members (like Mr P) consider the advantages of owning something and view membership as a way of generating a return, rather than simply paying for holidays in the usual way. That was likely to have been reinforced throughout the Supplier’s sales presentations by describing membership as a form of property ownership referring to the prospect of a “return”. And with that being the case, I think the language used during the Supplier’s sales presentations was likely to have been consistent with the idea that Fractional Club membership was an investment.

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 Mr P the financial value of the proprietary interest he 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>2</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.

So, if a supplier implied to consumers that future financial returns (in the sense of possible profits) from a timeshare were a good reason to purchase it, I think its conduct was likely to have fallen foul of the prohibition against marketing or selling the product as an investment. Indeed, if I'm wrong about that, I find it difficult to explain why, in paragraphs 77 and 78 followed by 99 and 100 of *Shawbrook & BPF v FOS* when, Mrs Justice Collins Rice said the following:

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

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

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

Given what I've already said about the Supplier's training material and the way in which I think it was likely to have framed the sale of Fractional Club membership to prospective members (including Mr P), I think it is more likely than not that the Supplier did, at the very least, imply that future financial returns (in the sense of possible profits) from Fractional Club membership were a good reason to purchase it.

So, overall, I think the Supplier's sales representative was likely to have led Mr P to believe that Fractional Club membership was an investment that may lead to a financial gain (i.e., a profit) in the future. And with that being the case, I don't find him either

implausible or hard to believe when he says he was told he could get money back from Fractional Club membership and that it sounded like a great investment (my interpretations of which, I'll address later in this decision).

On the contrary, in the absence of evidence to persuade me otherwise, I think that's likely to be what Mr P 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 Mr P 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 Mr P and the Lender under the Credit Agreement and related Purchase Agreement.

As the Supreme Court's judgment in Plevin makes clear, it does not automatically follow that regulatory breaches create unfairness for the purposes of Section 140A. Such breaches and his 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 he 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 Mr P, 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) lead him to enter into the Purchase Agreement and the Credit Agreement is an important consideration.

On my reading of Mr P's testimony, the prospect of a financial gain from Fractional Club membership was an important and motivating factor when he decided to go ahead with his purchase.

In Mr P's written testimony he said: "Looking at this as an investment as well as a holiday, we decided to invest in this." Also, in notes the PR said it took from a call with Mr P in October 2020 it was recorded that Mr P "chose to invest based on promises of holiday benefits and investment return".

I acknowledged in my provisional decision that the PR provided some evidence, (such as notes of telephone conversations with Mr P) quite some time after the complaint was made. However, I said on the balance of probabilities, these notes were likely to have been produced when the PR said they were and I still find this to be the case now.

In response to my provisional decision the Lender said that the additional context provided in some of these notes (including some the PR said were taken by a third party timeshare relinquishment company (which I'll call T)) shows that when Mr P said 'investment' he didn't mean profit or financial gain and so could not have been motivated by such things. And it said neither Mr P's written statement, nor the PRs notes provide enough context on their own to safely assume he meant a profit or financial gain when he said investment either.

I accept that the notes taken by T which say "*told could holiday for term and then get money back*" could be interpreted as Mr P having thought he would get no more than the initial purchase price. However, the notes also say "*sounded like a great investment*". A great investment to my mind can reasonably be interpreted as something that returns more than what is put in. And given the PRs notes say that Mr P purchased for an investment return, I think where T's notes said "get money back" it can reasonably be interpreted in this particular case as meaning Mr P was led to believe he could receive money back on top of his expenditure on Fractional Club membership.

And so, when Mr P said he looked at the purchase as an investment so decided to go ahead with it, on the balance of probabilities I think he meant that he viewed Fractional Club as something that he thought he could make a profit or financial gain from, and that this was an important factor in his decision to purchase it. .

As I said in my provisional decision, that doesn't mean Mr P was not interested in holidays. His own testimony demonstrates that he quite clearly was. And that is not surprising given the nature of the product at the centre of this complaint. But as Mr P says (plausibly in my view) that Fractional Club membership was marketed and sold to him at the Time of Sale as something that offered him more than just holiday rights, on the balance of probabilities, I think his purchase was motivated by his 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 to him. And with that being the case, I think the Supplier's breach of Regulation 14(3) was material to the decision he ultimately made.

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

The Lender has pointed out that when Mr P exchanged his Fractional Club membership for another purchase ('Signature Club') membership in 2019 he was given a trade in value that was less than what he paid for it. The Lender said it's reasonable to assume that if Mr P had been motivated by the prospect of making profit at the Time of Sale, he would have queried at the point he exchanged his membership why the value of it had decreased. But, it says he didn't and so it says this goes to show he was not motivated by a profit or financial gain at the Time of Sale.

However, the sale proceeds from Mr P's share of the allocated property would not be distributed until the membership term ended and the Allocated Property was sold, and it's from those proceeds that I think Mr P would have expected to receive a profit. So, I do not think Mr P would have been alarmed by a drop in the value of his membership by exchanging it towards another purchase at this point as he was nowhere near the end of his membership term and the Allocated Property had not been sold. In fact Mr P's testimony relating the later sale says he traded in partly to get a "better guarantee and investment return" so it seems an investment return at the end of his membership term was still within his contemplation at this point in time, and likely always had been.

### **Did the unfairness caused by the purchase of Fractional Club end when it was traded in for further purchases?**

On 10 June 2019, Mr P traded in his Fractional Club membership, paying an additional sum and by entering into a different purchase agreement for 'Signature Collection' membership thereby 'upgrading' and replacing Fractional Club membership. The credit relationship Mr P had with the Lender ended when that loan was repaid when making the purchase of Signature Collection membership in June 2019. As a result of his purchase of Signature Collection membership it is necessary to consider whether the unfairness caused to Mr P from the purchase of the original Fractional Club at the Time of Sale continued, and if it did continue, what were the ongoing consequences.

While the Supplier gave Mr P £8,840 credit for his original Fractional Club membership, this credit wasn't the equivalent of cash. It was a deduction from a starting price set by the Supplier itself for Mr P's upgrade to Signature Collection membership. And as there is no information to indicate what the market value was of the Allocated Property connected to his subsequent purchase, there is no evidence that the starting price of that 'upgrade' represented the objective value of the benefits under the new purchase agreement, as opposed to a commercial opening position from which the Supplier would and could profitably offer deductions or discounts. I don't think it can be said that the upgrade to Signature Collection membership improved Mr P's position financially. I think his original purchase of Fractional Club, and the associated Credit Agreement with the Lender had ongoing financial consequences for him, which continued the unfair relationship with the Lender. And for that reason, it is my view that the Lender is still answerable for them. I've outlined below what I consider to be the fair and reasonable way to resolve this complaint.

### **Conclusion**

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

### **Fair Compensation**

Having found that Mr P 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 him back in the position he would have been in had he not purchased the Fractional Club membership (i.e., not entered into the Purchase Agreement), and therefore not entered into the Credit Agreement.

It appears from the 'consolidation instruction' document that some of the loan proceeds were used by the Supplier to repay existing finance from another lender used to purchase Mr P's trial membership. As I understand it, trial membership involved the purchase of a fixed number of week-long holidays at the Supplier's main resorts over a set period in return for a fixed price. The purpose of trial membership was to give prospective members of the Supplier's longer-term products a glimpse of what it might be like to be a member of the Fractional Club for instance. And according to an extract from the Supplier's business plan, roughly 50% of trial members went on to become timeshare members as a result. If, after purchasing trial membership, a consumer went on to purchase membership of one of the Supplier's longer-term products, their trial membership was usually cancelled and traded in against the purchase price of their timeshare – which is what happened at the Time of Sale.

I still think that Mr P's trial membership was a precursor to his Fractional Club membership. And as he paid for his trial membership using finance that he refinanced under the Credit Agreement, in the absence of any realistic prospect of the trial membership being reinstated to the satisfaction of both parties to it, it acted, in essence, as a deposit that I think ought to be reflected in my redress when remedying this complaint given its facts and circumstances.

The PR said that the redress I said I planned to award in my provisional decision should include an additional refund of the trade in value given to Mr P's trial membership within the calculation. The Lender questioned that if I did make such award, whether the sum that was consolidated by its loan to repay finance from the other lender used for the trial membership should be deducted from that refund.

For clarity, Mr P should not receive both the trade-in value given to trial membership and the sum used to consolidate his loan to buy it as he'd be recovering more than he fairly should – almost double. By receiving all of his repayments back, which includes the sum used to consolidate his previous loan, Mr P is mostly redressed in this case for the value given to his trial membership by the Supplier. There is a small difference of around £118 between the value given to the trial membership and the amount that was redeemed with the previous lender which I think it's fair to ask the Lender to pay to him.

The Lender also said that it should be able to deduct the cost of any holidays Mr P took using his trial membership. From what Mr P said, he purchased Fractional Club membership while on a 'free' holiday, so it seems he may never have used his trial membership. However, should the Supplier's records show he used his trial membership to take a holiday, the Lender can deduct the cost of that holiday.

### **Putting things right**

Here's what I think needs to be done to compensate Mr P with that being the case – whether or not a court would award such compensation:

- (1) Mitsubishi HC Capital UK PLC trading as Novuna should refund Mr P'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), Mitsubishi HC Capital UK PLC trading as Novuna should also

refund:

- i. The annual management charges Mr P paid as a result of Fractional Club membership.
- ii. The difference between the trade-in value given to Mr P's trial membership by the Supplier and the amount used to consolidate Mr P's previous loan that was used to pay for that membership.

(3) Mitsubishi HC Capital UK PLC trading as Novuna can deduct:

- i. The value of any promotional giveaways that Mr P used or took advantage of; and
- ii. The market value of the holidays\* Mr P took using his Fractional Points or Trial membership.

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

(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) Mitsubishi HC Capital UK PLC trading as Novuna should remove any adverse information recorded on Mr P's credit file(s) in connection with the Credit Agreement.

However, as I don't think that the effects of the unfairness in question ended when Mr P upgraded his Fractional Club membership in June 2019, and as I think that his original 1,360 Fractional Points were essentially rolled over into the upgrade and that had ongoing financial consequences for him, the redress needs to reflect that. So, I also think Mitsubishi HC Capital UK PLC trading as Novuna needs to refund the proportion of the management charges payable after the upgrade that relates to those 1,360 original annual fractional points – which, being more than 100% of the 1,820 bi-annual points Mr P ended up with, means:

(6) Mitsubishi HC Capital UK PLC trading as Novuna should refund the ongoing annual management charges paid by Mr P from the time of the upgrade onwards, up to the maximum he would have had to pay under his Fractional Club membership. But Mitsubishi HC Capital UK PLC trading as Novuna can deduct the market value\* of any holidays taken using Fractional Points, if any, as any holiday he took after the upgrade would have been a holiday he could have taken with his earlier membership (the 'Ongoing Charges').

(7) Simple interest at 8% per annum should be added to the Ongoing Charges from the date each charge was paid until the date Mitsubishi HC Capital UK PLC trading as Novuna settles this complaint\*\*.

\*I recognise that it can be difficult to reasonably and reliably determine the market value of holidays when they were taken a long time ago and might not have been available on the open market. So, if it isn't practical or possible to determine the market value of the holidays Mr P took using his 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 his usage.

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

### **My final decision**

For the reasons I've explained above, I uphold Mr P's complaint and direct Mitsubishi HC Capital UK PLC trading as Novuna to do what I've said in the 'putting things right' section of this decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 3 February 2026.

Michael Ball  
**Ombudsman**