

## The complaint

Mr S' complaint is, in essence, that Mitsubishi HC Capital trading as Novuna Personal Finance (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 S were the members of a timeshare provider (the 'Supplier') – having purchased a number of products with 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 22 November 2011 (the 'Time of Sale'). They entered into an agreement with the Supplier to buy 1,494 fractional points at a cost of £22,347<sup>1</sup> (the 'Purchase Agreement').

Fractional Club membership was asset backed – which meant it gave Mr and Mrs S 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 S paid for their Fractional Club membership by taking finance of £26,342<sup>2</sup> from the Lender (the 'Credit Agreement') in Mr S' name making him the sole and only complainant in this case.

Mr S – using a professional representative (the 'PR') – wrote to the Lender on 12 January 2022 (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 Mr S' concerns as a complaint and issued its final response letter on 18 April 2023, rejecting it on every ground.

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

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

## The legal and regulatory context

In considering what'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.

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<sup>1</sup> The sum of £22,347 appears to be the cost of Mr and Mrs S' purchase net of a trade in allowance given by the Supplier for a previous membership held

<sup>2</sup> This sum includes the sum of £3,995 to repay previous finance taken out with the Lender in respect of a previous membership held

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:

#### The Office of Fair Trading’s Irresponsible Lending Guidance – 31 March 2010

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

I considered the matter and issued a provisional decision (the ‘PD’) dated 20 October 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.

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.

As a general rule, I think it’s reasonable for creditors to reject Section 75 claims that they are first informed about after the claim has become time-barred under the Limitation Act 1980 (“LA”), as it wouldn’t be fair to expect creditors to look into such claims so long after the liability arose and after a limitation defence would have been available in court. So, it’s relevant to consider whether Mr S’ Section 75 claim was time-barred under the LA before the PR put the claim to the Lender on his behalf.

As I mentioned above, a claim under Section 75 is a “like claim”. This means it mirrors the claim Mr S could have made against the Supplier.

A claim for misrepresentation against the Supplier would ordinarily be made under Section 2(1) of the Misrepresentation Act 1967. And the limitation period to make such a claim expires six years from the date on which the cause of action accrued. A claim for breach of contract against the Supplier would also be subject to a limitation period of six years from the date on which the cause of action accrued.

Any claim against a lender under Section 75 is also “an action to recover any sum by virtue of any enactment” under Section 9 of the LA. Such claims also have a time limit of six years from the date the cause of action accrued.

In claims for misrepresentation, the cause of action accrues at the point a loss is incurred. In Mr S’ case, that’s when he entered the agreement to purchase the timeshare, and the related Credit Agreement, on 22 November 2011. This would be mirrored in the claim against the Lender.

Mr S first notified the lender of his Section 75 claim in January 2022, more than six years after the cause of action accrued in relation to his claims for misrepresentation. So I don’t think it was unfair or unreasonable of the Lender to decline the part of the claim relating to the Supplier’s alleged misrepresentations.

### **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 other than to say that, if I find that the Supplier is liable for having breached the Purchase Agreement, the Lender is also liable.

Mr S 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 S’ concerns of misrepresentation, I accept it’s possible that the alleged breach occurred within six years of the date Mr S notified the Lender of his claim. But I don’t find it necessary to make a finding on this point.

Mr S 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.

But, 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 likely to have been signed by Mr S states that the availability of holidays was/is subject to demand. It also looks like he made use of his fractional points to holiday on a number of occasions. I accept that he may not have been able to take certain holidays. But I’ve not seen enough to persuade me that the Supplier had breached the terms of the Purchase Agreement.

The PR also says on Mr S’ behalf that the Supplier breached the Purchase Agreement because it went into liquidation. And if certain parts of the Supplier’s business were put into administration, I can understand why the PR is alleging that there was a breach of the Purchase Agreement as a result. However, neither Mr S nor the PR have said, suggested or provided evidence to demonstrate that he is, as a result of parts of the Supplier’s business being put into administration, 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.

So, from the evidence I've seen, I don't think the Lender is liable to pay Mr S any compensation for a breach of contract by the Supplier. And with that being the case, I don't think the Lender acted unfairly or unreasonably in relation to this aspect of the complaint either.

### **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 S 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 S and the Lender.

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

Mr 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 S; and
2. Mr S 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 S 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 S.

I acknowledge that Mr S 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 S 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 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 Mr S. 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 S 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 S 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 S, the financial value of his share in the net sales proceeds of the Allocated Property along with the investment considerations, risks and rewards attached to them.

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 S 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 S 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 S 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 S decided to go ahead with his purchase. I say that having read and considered testimony from Mr S dated 2 July 2019.

This testimony sets out Mr S' recollections of his and Mrs S' entire relationship with the Supplier. As regards the purchase of the Fractional Club at the Time of Sale Mr S says:

*"After purchasing our first purchase we were asked to have breakfast with them for an update everytime we went which usually lasted till evening wasting a day of our holiday In the meeting we were told if we changed from one product to another we would have better accommodation and increased the value of our purchase so we could have more holidays It came to a point when we tried to book a holiday there were no vacancies" [sic]*

In my view the above suggests that what motivated Mr S to make the purchase subject to this complaint was the type, quality and exclusivity of holidays that he understood membership would allow them to take, not the potential of a profit. And for the sake of completeness I would add that if the potential of a profit was a motivating factor in Mr S' purchasing decision, I might have expected him to say so specifically and in some detail.

That doesn't mean Mr S 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 Mr S himself 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 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 S 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 S 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 S 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 S nor the PR have persuaded me that Mr S 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, as things currently stand, I don't think that the Lender acted unfairly or unreasonably when it dealt with the relevant Section 75 claim(s), and if I put the issue of commission to one side for the time being, I'm not persuaded that the Lender was party to a credit relationship with Mr S under the Credit Agreement that was unfair to him for the purposes of Section 140A of the CCA – nor do I see any 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 S' credit relationship with the Lender wasn't 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 said it had nothing further to add.

The PR responded to my further communication (detailing how I wasn't persuaded that Mr S' credit relationship with the Lender wasn't unfair to him for reasons relating to the commission arrangements between it and the Supplier) to say that it had nothing further to add.

### **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.

As the Lender has accepted my PD and the PR has confirmed it has nothing further to add to it (or my further communication detailing how I wasn't persuaded that Mr S' credit relationship with the Lender wasn't unfair to him for reasons relating to the commission arrangements between it and the Supplier) I can confirm that I see no reason to depart from my provisional findings.

So 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 S' Section 75 claims, and I'm not persuaded that the Lender was party to a credit relationship with them 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 S to accept or reject my decision before 9 January 2026.

Peter Cook  
**Ombudsman**