DRN-5951822

The complaint

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

Although the timeshare in question was bought in the joint names of Ms E and Mr S, the credit agreement was in Ms E's sole name, so she is the only eligible complainant here. I will, however, refer to both Ms E and Mr S where it is appropriate to do so.

What happened

Ms E and Mr S were members of a timeshare from a timeshare provider (the 'Supplier') having bought a number of products from it over time.

Their first full membership was in the Vacation Club (the 'VC'). Between 2009 and 2011 they purchased a total of 4,001 VC points.

As VC members, every year they could use their points in exchange for holidays at the Supplier's holiday resorts. Different accommodation had different points values, depending on factors such as location, size, and time of year. So, for example, a larger apartment in peak season would cost more to a member in their points than a smaller apartment outside of school holiday periods.

On 16 August 2012, Ms E and Mr S traded in their VC points towards the purchase of a different type of timeshare – the Fractional Property Owners Club ('FPOC'). They bought 4,140 fractional points, and after the trade-in value the Supplier gave to their VC points, they ended up paying £9,386 for this FPOC membership.

On 12 August 2014 Ms E and Mr S traded in their fractional points towards the purchase of a new FPOC membership (the 'FPOC2') and 4,190 fractional points from the Supplier, for a purchase price of £64,810. But after the trade-in value given to their existing 4,140 fractional points, they ended up paying £6,850 for the FPOC2 membership.

Both FPOC and FPOC2 were, unlike their previous VC membership, asset backed – so each membership included a share in the net sale proceeds of a property named on the purchase agreement after their membership term ends.

Ms E paid for both purchases by taking finance agreements from different finance providers. Complaints about both of these sales have been dealt with separately by this Service and are included here for background purposes only.

On 14 August 2017 (the 'Time of Sale' being considered here) Ms E and Mr S traded in one of their four FPOC2 fractions (810 fractional points) towards the purchase of an upgraded bi-annual membership (the 'Signature Collection') and 2,330 fractional points. This had a purchase price of £21,369, but after trading in 810 fractional points, they ended up paying

[1] At the time of the sale the Lender was trading as Hitachi Personal Finance.

£10,449 for their Signature Collection membership (the 'Purchase Agreement').

Signature Collection was also asset backed, which meant that, in addition to holiday rights, Ms E and Mr S were entitled to receive their fractional share in the net sales proceeds of the property named on their Purchase Agreement (the 'Allocated Property') after their membership term ends.

But Signature Collection membership differed in that unlike their FPOC and FPOC2 memberships, it guaranteed Ms E and Mr S the right to stay in the Allocated Property (which was sold as being more luxurious and better appointed than the standard properties) for a set week every other year if they wished. Or like the standard fractional membership, they could use their points to book accommodation from the Supplier's portfolio of resorts.

Ms E paid for their Signature Collection membership by taking finance from the Lender (the 'Credit Agreement) of £10,449.

Ms E – using a professional representative (the 'PR') – wrote to the Lender on 4 February 2020 (the 'Letter of Complaint') to raise a number of different concerns about their purchase of the Signature Collection and the associated credit relationship with the Lender. 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 did not respond to the complaint within the eight weeks required by the Regulator, so the PR referred the complaint to the Financial Ombudsman Service.

Upon being contacted by this Service, the Lender said it had never received the complaint and would now consider it. It did so, and on 31 May 2022 sent Ms E its final response to her complaint, rejecting it on all grounds.

Ms E did not accept this outcome and asked for her complaint to be considered by this Service. It was assessed by an Investigator who, having considered the information on file, rejected the complaint on its merits.

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

As part of the PR's submissions in this case, it sent this Service a statement from Ms E and Mr S dated 25 September 2019. This set out their recollections of their entire relationship with the Supplier and the purchases they had made. The following is an extract of this statement insofar as it relates to their fractional points purchases:

> *"In 2012 we were in Spain and were invited to an update meeting to discuss a new product called fractional points. This turned into another long-high-pressured sales presentation where we were offered the opportunity to obtain a good deal on points if we purchase that day.*
>
> *The representatives advised that fractional points were an investment in property that would be sold in the future. We would then have our fraction of the investment plus any profit from the sale of the market value. We would also have a guarantee [sic] exit from our timeshare contract."*
>
> *On the basis of the above we purchased 4140 fractional points on the 16th of August 2012 with a [redacted] consolidated loan £9386.*
>
> *We were in Spain in 2014 and on this occasion the representatives advised that we should be exchanging more of our European points for fractional points. We were again advised that we should be investing in fractional phase 2 of the fractional investment as*

you did not have to pay fees per points and would be saving money. This is not the case. The fees have increased year on year and do not reflect the investment that we have made or the product that we were promised.

The representatives advised that we would again be investing in property and we would have a return on this investment when the property was sold in approximately 15 years. We were now reflecting on the future and were keen to have an exit date in the future from our timeshare contract. The representatives advised that we were guaranteed and [sic] exit date on the sale of our fractional properties.

On the advice of the representatives and believing we would have a guaranteed exit date from our contract, we purchased 4190 fractional points on the 12 August 2014 for the cost of £6850. This was funded through Barclays Partner Finance. […]"

We were in Spain in 2017 on holiday when we were invited to a meeting with the representatives. The representatives advised that they now had suites available for fractional investment. The suites were a more lucrative investment and would give us an excellent return on our monies. Additionally, they were very sought after and would sell easily.

We could use these luxurious suites for our holidays every second year until the sale date.

We were offered a good price if we purchased on the day. Believing that we would make a good return on the sale we decided to make a final investment on 2330 fractional points on 14/08/17 for the cost of £10,449 […]"

I couldn't see that the Lender had been given the opportunity to consider the statement, so I sent it a copy, and asked it to review its position on the merits of Ms E's complaint in light of what it contained. I also asked it to provide some more information about Ms E and Mr S's timeshare purchases.

It provided the requested information, and as regards the merits of Ms E's complaint, it maintained that it didn't think it ought to be upheld. It thought this because it had doubts as to the reliability of the statement. It provided a response from the Supplier who said - in summary:

- Although the PR has now provided some evidence of when they spoke to Ms E and Mr S, there is no evidence the full statement was taken at that time.
- There are consistent anomalies with the validity of evidence submitted by this PR, including the word count, date, modification of the statement, content being identical to others, and incorrect references to other Developers and their products.
- The statement does not list all of the purchases Ms E and Mr S made between 2008 and 2017 and contains many inaccuracies.
- There is a discrepancy in the word count of the statement of circa 27 words. The same statement was received from a different lender (relating to the complaint about FPOC2) and some of the sentences had been highlighted in pink marker, suggesting the testimony had been altered before it was sent to the Financial Ombudsman Service.

The Supplier then pointed out that memories fade over time, and if the statement was written in 2019, they forgot events, purchases and confused holiday locations, including:

- They had two holidays in 2009, in Spain and Portugal, but only talk about Spain in 2010. But they did not holiday in Spain in 2010, they went to Turkey.
- They mention Kusadasi (as part of their VC membership) but they did not travel there

until 2015.

The Supplier continued:

- Only during promotional holidays was attendance at presentations mandatory. Ms E and Mr S had attended many such presentations, so they were aware of what they consisted of. There was no obligation to purchase.
- The sales were not conducted under pressure, and contemporaneous sales notes show that they had been given enough time to consider the purchases and didn't need any more time to think about it. They were also given their 14-day recission period during which they could have cancelled if they had felt pressured as suggested.
- Ms E and Mr S were aware they could relinquish their VC membership, as they had been given information about how to do that in 2011. So they were aware they did not have to change product (to FPOC) to have a guaranteed exit.
- Sales notes from their purchases show that they loved the quality of the accommodation and holidays.
- Ms E and Mr S's comments about not having to pay fees with FPOC2 are illogical. There was no booking fee, but the management fees remained payable.
- The point-of-sale documentation, signed by Ms E and Mr S, clearly explains that the purchase of the fractional membership is not a financial investment. There are numerous references to this point made during the sales process and within the key sales documents provided at the point of sale.
- The statement only talks about how the membership was sold to them; it doesn't suggest the investment element was a motivation for them to make the purchase. The Member's Declaration also clearly indicates that the Supplier makes no representation as to the future price or value of the Fractions(s). They have never asked for resale information.

The Supplier concluded that more weight should be placed on the note(s) taken on the day of purchase, rather than a somewhat questionable testimony that has only been provided post the Judicial Review[2].

The provisional decision

Having considered everything that had been submitted, I thought the complaint ought to be upheld. I set out my initial thoughts in a provisional decision (the 'PD') and invited both sides to submit any new evidence and arguments that they wanted me to consider before I made my final decision.

In my PD I said:

"The legal and regulatory context

In considering what is fair and reasonable in all the circumstances of the complaint, I am required under DISP 3.6.4R to take into account: relevant (i) law and regulations; (ii) regulators' rules, guidance and standards; and (iii) codes of practice; and (where appropriate), what I consider to have been good industry practice at the relevant time.

The legal and regulatory context that I think is relevant to this complaint is no different to that

[2] *R (on the application of Shawbrook Bank Ltd) v Financial Ombudsman Service Ltd and R (on the application of Clydesdale Financial Services Ltd (t/a Barclays Partner Finance)) v Financial Ombudsman Service* [2023] EWHC 1069 (Admin) ('*Shawbrook & BPF v FOS*').

shared in several hundred ombudsman decisions on very similar complaints. And with that being the case, it is not necessary to set it out here. But if either side would like me to confirm what I think that context is, they can let me know in response to this provisional decision.

What I've provisionally decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

And having done that, I currently think that this complaint should be upheld because the Supplier breached Regulation 14(3) of the Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010 (the 'Timeshare Regulations') by marketing and/or selling the Signature Collection membership to Ms E and Mr S as an investment, which, in the circumstances of this complaint, rendered the credit relationship between Ms E and the Lender unfair to her for the purposes of Section 140A of the CCA.

However, before I explain why, I want to make it clear that my role as an Ombudsman is not to address every single point that has been made to date. Instead, it is to decide what is fair and reasonable in the circumstances of this complaint. So, while I recognise that there are a number of aspects to this complaint, it is not necessary to make formal findings on all of them because, even if one or more of those aspects ought to succeed, the redress I am currently proposing puts Ms E in the same or a better position than she would otherwise be in.

The witness testimony

As set out, a statement from Ms E and Mr S was sent to this Service as part of the PR's submissions. It is not signed, and is dated 25 September 2019. I have thought about how much weight I can place on the contents of the statement when considering the merits of Ms E's complaint.

As I've said, the statement is dated 25 September 2019, but it was not sent to this Service until October 2023. But I can see on the statement that a booking was made with Ms E and Mr S by the PR on 24 September 2019, so it appears likely that a telephone call was set up to take details for the statement on that date. And this was some five months prior to the Letter of Complaint, and the statement was probably prepared as part of the PR's case preparation. Indeed, the Letter of Complaint is generally consistent with the contents of the statement, which leads me to think the statement was used to inform the Letter of Complaint. So, on balance, I am satisfied that the statement was prepared then.

But the statement does appear to have been prepared and written by the PR, and as I've said, was probably taken during a telephone conversation. So, I am mindful of the risk that Ms E and Mr S may have been guided through the process, and the associated risk that what has been written may not be their own specific recollections.

But I think that risk is low, as I can see it contains personal information about their purchasing history that only Ms E and Mr S would have known, so I have no doubt that Ms E and Mr S had a significant input into its contents. It is also not unusual for statements to be prepared on complainants' behalf by professional representatives. Taking everything into account I am satisfied that it is a record of Ms E and Mr S's recollections of their relationship with the Supplier.

I have considered what the Supplier has said about the apparent anomaly around the word count, and that another version of the statement that it has seen has pink highlighter pen

markings on it. The statement has, on the last line, the following – WC: 1359

This most likely refers to the word count of the statement. The Supplier says that on the copy it has seen there is a discrepancy in the word count of 27. But having looked at the statement, I don't agree with this. It appears that the main body of the statement has a word count of 1358. When taking into account whether numbers and punctuation may have been counted, I think this is accurate and does not suggest any words have been added or taken away as the Supplier seems to be suggesting. I am also not concerned that there is another copy of the statement in existence that appears to have pink highlighter pen on it. There is no difference in the words used, so I cannot see how this is in any way relevant.

When considering how much weight I can place on Ms E and Mr S's statement, I am assisted by the judgement in the case of Smith v Secretary of State for Transport [2020] EWHC 1954 (QB).

At paragraph 40 of the judgment, Mrs Justice Thornton helpfully summarised the case law on how a court should approach the assessment of oral evidence. Although in this case I have not heard direct oral evidence, I think this does set out a useful way to look at the evidence Ms E and Mr S have provided. Paragraph 40 reads as follows:

> *"At the start of the hearing, I raised with Counsel the issue of how the Court should assess his oral evidence in light of his communication difficulties. Overnight, Counsel agreed a helpful note setting out relevant case law, in particular the commercial case of Gestmin SPGS SA v Credit Suisse (UK) Ltd [2013] EWHC 3560 (Comm) (Leggatt J as he then was at paragraphs 16-22) placed in context by the Court of Appeal in Kogan v Martin [2019] EWCA Civ 1645 (per Floyd LJ at paragraphs 88-89). In the context of language difficulties, Counsel pointed me to the observations of Stuart- Smith J in Arroyo v Equion Energia Ltd (formerly BP Exploration Co (Colombia) Ltd) [2016] EWHC 1699 (TCC) (paragraphs 250-251). Counsel were agreed that I should approach Mr Smith's evidence with the following in mind:*
>
> a. *In assessing oral evidence based on recollection of events which occurred many years ago, the Court must be alive to the unreliability of human memory. Research has shown that memories are fluid and malleable, being constantly rewritten whenever she are retrieved. The process of civil litigation itself subjects the memories of witnesses to powerful biases. The nature of litigation is such that witnesses often have a stake in a particular version of events. Considerable interference with memory is also introduced in civil litigation by the procedure of preparing for trial. In the light of these considerations, the best approach for a judge to adopt in the trial of a commercial case is to place little if any reliance at all on witnesses' recollections of what was said in meetings and conversations, and to base factual findings on inferences drawn from the documentary evidence and known or probable facts (Gestin and Kogan).*
> b. *A proper awareness of the fallibility of memory does not relieve judges of the task of making findings of fact based upon all the evidence. Heuristics or mental short cuts are no substitute for this essential judicial function. In particular, where a party's sworn evidence is disbelieved, the court must say why that is; it cannot simply ignore the evidence (Kogan).*
> c. *The task of the Court is always to go on looking for a kernel of truth even if a witness is in some respects unreliable (Arroyo).*
> d. *Exaggeration or even fabrication of parts of a witness' testimony does not exclude the possibility that there is a hard core of acceptable evidence within the body of the testimony (Arroyo).*
> e. *The mere fact that there are inconsistencies or unreliability in parts of a witness'*

evidence is normal in the Court's experience, which must be taken into account when assessing the evidence as a whole and whether some parts can be accepted as reliable (Arroyo).

f. Wading through a mass of evidence, much of it usually uncorroborated and often coming from witnesses who, for whatever reasons, may be neither reliable nor even truthful, the difficulty of discerning where the truth actually lies, what findings he can properly make, is often one of almost excruciating difficulty yet it is a task which judges are paid to perform to the best of her ability (Arroyo, citing Re A (a child) [2011] EWCA Civ 12 at para 20)."

I have thought about how much weight I can place on this statement when considering the merits of Ms E and Mr S's complaint. And having done so, I feel able to place weight on its contents. I do so whilst being cognisant of the fact that memories can fade over time, and that inconsistencies in evidence are a normal part of someone trying to remember what happened in the past. So, I'm not surprised that there may be some inconsistencies between what they say has happened over the course of their purchases, and what other evidence shows. The question to consider, therefore, is whether there is a core of acceptable evidence from Ms E and Mr S, such that the inconsistencies have little to no bearing on whether their testimony can be relied on, or whether such inconsistencies are fundamental enough to undermine, if not contradict, what the Supplier was likely to have said and/or done during the sale of the Signature Collection, or their other purchases.

I don't, for example, find it in any way material that Ms E and Mr S have failed to mention two holidays that they took in 2008, and seem to have confused which countries they took holidays in as part of their VC membership. These holidays were taken between 9 and 11 years before the statement was written, so I'm not surprised that there are some mistakes in this regard. I also do not think it significant that Ms E and Mr S appear to have confused what the Supplier told them about the fees they would or would not have to pay as part of their FPOC2 membership. This is a detail that is not, in my view, material to whether or not that membership was sold as an investment, or even that it has a bearing on the circumstances of the sale of the Signature Collection that I am considering here. I also do not think it is material to whether the testimony can be relied on. I don't think these mistakes or inconsistencies fundamentally undermine the crux of the statement, which sets out that all the fractional memberships, including the Signature Collection membership, were bought because of their investment potential.

So, overall, I am satisfied that I can place weight on Ms E and Mr S's testimony when considering what most likely happened at the Time of Sale.

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

Having considered the entirety of the credit relationship between Ms E and the Lender along with all of the circumstances of the complaint, I think the credit relationship between them was likely to have been rendered unfair for the purposes of Section 140A. When coming to that conclusion, and in carrying out my analysis, I have looked at:

1. *The Supplier's sales and marketing practices at the Time of Sale – which includes training material that I think is likely to be relevant to both the sale in question, and the previous fractional memberships;*
2. *The provision of information by the Supplier at the Time of Sale, including the contractual documentation and disclaimers made by the Supplier;*
3. *Evidence provided by both parties on what was likely to have been said and/or done at the Time of Sale; and*

4. *The inherent probabilities of the sale given its circumstances.*

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

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

The Lender does not dispute, and I am satisfied, that Ms E and Mr S's 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 Ms E says that the Supplier did exactly that at the Time of Sale – saying, in summary, that they were told by the Supplier that Signature Collection membership was the type of investment that would increase in value.

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

Ms E and Mr S's share in the Allocated Property clearly constituted an investment as it offered them the prospect of a financial return – whether or not, like all investments, that was more than what they first put into it. But it is important to note at this stage that 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 <u>as an investment</u>. 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 Signature Collection. They just regulated how such products were marketed and sold.

To conclude, therefore, that Signature Collection membership was marketed or sold to Ms E and Mr S 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 them as an investment, i.e. told them or led them to believe that Signature Collection membership offered them 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 Ms E and Mr S, 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. As the Supplier has pointed out there were, for instance, disclaimers in the contemporaneous paperwork that state that Signature Collection membership was not sold to Ms E and Mr S as an investment.

However, weighing up what happened in practice is, in my view, rarely as simple as looking

at the contemporaneous paperwork. And for reasons I'll now come on to, given the facts and circumstances of this complaint, I think the Supplier is likely to have breached Regulation 14(3) of the Timeshare Regulations.

How the Supplier marketed and sold the Signature Collection membership

Over the course of the Financial Ombudsman Service's work on complaints involving fractional timeshare sales, the Supplier has provided a training material document called "2015 SPAIN FRACTIONALS AT SIGNATURE SUITE COLLECTION SALES TRAINING MANUAL FOR FPOC AND VACATION CLUB OWNERS" ('the Manual') used to train its sales agents in the selling of the product purchased by Ms E and Mr S.

As I understand it, the Manual was in use at the time Ms E and Mr S made their purchase. It's not entirely clear whether they 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 agents would have got before selling Ms E and Mr S's Signature Collection membership; and*

(2) *how the sales agents would have framed the sale of Signature Collection membership to them.*

Having looked through the Manual, I am first drawn to the slide on page 11, which is the first slide that brings in the Signature Collection membership and its purpose. It says:

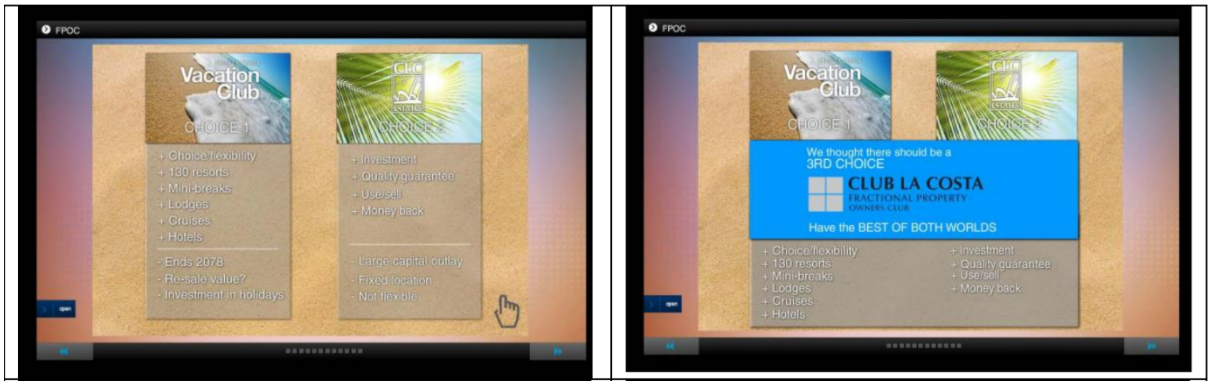
"When our members asked if they could buy a [Supplier] property in its entirety, we developed [Supplier] Estates which has been tremendously successful and has now sold over 2000 properties all around the world.

In recent years our members requested shorter term products so to fulfil that demand we created our Fractional Property Owners Club which is a shorter term product with a fixed asset attached providing an exit in 19 years and money back"

This slide strongly suggests the sales agent is likely to have made the point to the customer that purchasing the membership would allow them to own a physical asset, that being the fraction of a real property, and that this ownership would lead to "money back" at the end of the term.

From the off, therefore, it seems likely that the sales agent would have demonstrated that there was a significant financial advantage to gaining the membership that set it apart from membership of a 'standard' timeshare that only provided customers with holiday rights.

I've then considered the slides copied below, which are found on page 106:



These slides appear in a part of the presentation titled "In House Game Plan for Vacation Club Owners". Ms E and Mr S were not Vacation Club Owners but were existing fractional members (FPOC2) at the Time of Sale. However, I've thought about what these slides show as being indicative of the sales practices by the Supplier at that time. And this includes the Supplier's use of the word "investment" to describe Signature Collection membership. So, although I accept this part of the slide deck was probably not shown to Ms E and Mr S, I also think it was likely that the Supplier's sales staff would have been trained to talk about Signature Collection memberships like Ms E and Mr S's as investments at the Time of Sale. That means there was a real possibility that was done in Ms E and Mr S's sale.

I acknowledge that there may not have been a comparison between the expected level of financial return and the purchase price of Signature Collection membership. However, if I were to only concern myself with express efforts to quantify to Ms E and Mr S the financial value of the proprietary interest they were 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)).'"[3] *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 they 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

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[3] The Department for Business Innovation & Skills *"Consultation on Implementation of EU Directive 2008/122/EC on Timeshare, Long-Term Holiday Products, Resale and Exchange Contracts (July 2010)".* https://assets.publishing.service.gov.uk/media/5a78d54ded915d0422065b2a/10-500-consultation-directive-timeshare-holiday.pdf

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 their 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." (Emphasis is my own.)*

Having considered the training materials I've seen from the Supplier in the round, I note that there does not appear to be any attempt to minimise or explicitly reject the notion that the Signature Collection membership contained an investment element. Nor have I seen anything that contradicts or clashes with what Ms E and Mr S have said about the way the membership was sold to them. Given this, I think it's more likely than not that the Supplier did, at the very least, imply that future financial returns (in the sense of possible profits) from the membership were a good reason to purchase it. I recognise that the Manual is mainly taken up with explaining and selling the additional benefits of the Signature membership, namely the luxurious nature of the accommodation and the services on offer to members, and Ms E and Mr S acknowledge that when they say:

> *"We could use these luxurious suites for our holidays every second year until the sale date."*

But they go on to say:

> *"We were offered a good price if we purchased on the day. Believing that we would make a good return on the sale we decided to make a final investment…"*

So, overall, I think the Supplier's sales representative, during Ms E and Mr S's sale, was likely to have led them to believe that the Signature Collection 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 them either implausible or hard to believe when they say they were told that the suites were a more lucrative investment than their existing FPOC2 and would give them an excellent return on their monies. On the contrary, in the absence of evidence to persuade me otherwise, I think that's likely to be what Ms E and Mr S were led by the Supplier to believe at the relevant time.

But in addition to what they were likely told at the Time of Sale, it is important to note that this was the third 'fractional' membership they had purchased – they went through a sales presentation for their FPOC membership in 2012 and the FPOC2 in 2014. The presentation Ms E and Mr S were likely shown at the Time of Sale would have been different to that which they would have been shown for either of their previous fractional purchases. And although I am not considering a complaint here about the FPOC or FPOC2 memberships and how they were sold, when looking at the circumstances as a whole I think it is fair to consider what Ms E and Mr S were likely told about fractional memberships in 2012 and 2014, as that is likely to have set the tone for this subsequent Signature Collection purchase. Although there were subtle differences in the products and how they were sold, they were after all, all fractional memberships which were asset-backed with an Allocated Property designed to provide members with the net proceeds of its sale value.

And, as I go on to explain below, when their FPOC membership was marketed to Ms E and Mr S in 2012, it was likely to have given them the impression that the membership was an investment.

Alongside the information this Service has been given about the training and sales

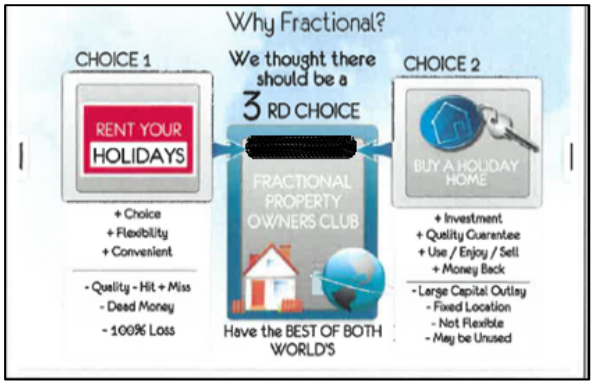
presentations that were associated with the selling of the type of Signature Collection I am considering here, we have also been provided training material used to prepare its sales representatives – including a document called "2011 Spain PTM FPOC 1 Practice Slides Manual" (the '2011 Fractional Training Manual').

As I understand it, the 2011 Fractional Training Manual was used throughout the sale of the Supplier's first version of the FPOC. It isn't entirely clear whether Ms E and Mr S would have been shown the slides included in the Manual as part of their sales presentation in 2012, but it seems to me to be reasonably indicative of:

(1) *the training the Supplier's sales representatives would have got before selling Ms E and Mr S's FPOC membership; and*

(2) *how the sales representatives would have framed the sale of FPOC membership to Ms E and Mr S.*

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



This slide titled "Why Fractional?" indicates that sales representatives would have taken Ms E and Mr S through three holidaying options along with their positives and negatives:

(1) *"Rent Your Holidays"*

(2) *"Buy a Holiday Home"*

(3) *The "Best of Both Worlds"*

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

So, when Ms E and Mr S made their first fractional membership purchase, it is likely that it was positioned as an alternative to their VC membership which provided the same holidays and accommodation choice, but also had the prospect of a profit at the end of the shorter membership term.

So, it seems likely that Ms E and Mr S were presented with the opportunity to purchase the FPOC membership in 2012 in a way that suggested, either explicitly or implicitly, that it could lead to a financial gain (i.e. a profit) on the sale of the allocated property. And their testimony supports that this is what happened. But they went through a second fractional sales presentation two years later, and I can't see that anything they were told in the 2014

presentation would have dissuaded them from the idea that fractional memberships were not financial investments. I'll explain.

The training material used by the Supplier to prepare its sales representatives for selling the type of membership (FPOC2) bought by Ms E and Mr S in 2014 has also been provided to us – including:

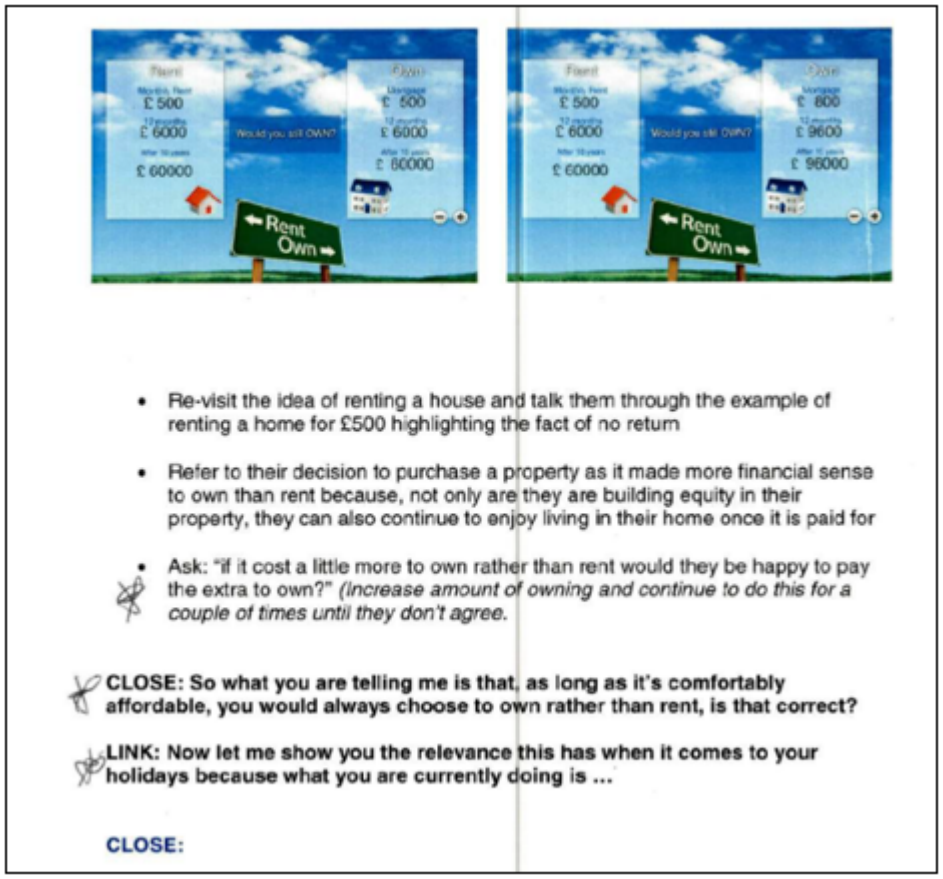
1. *A document called the 2013/2014 Sales Induction Training (the '2013/2014 Induction Training');*
2. *Screenshots of a Electronic Sales Aid (the 'ESA'); and*
3. *A document called the "FPOC2 Fly Buy Induction Training Manual" (the 'Fractional Club Training Manual')*

Neither the 2013/2014 Induction Training nor the ESA I've seen included notes of any kind. However, the Fractional Club Training Manual includes very similar slides to those used in the ESA. And according to the Supplier, the Fractional Club Training Manual (or something similar) was used by it to train its sales representatives in 2014. So, it seems to me that the Training Manual is reasonably indicative of:

- *The training the Supplier's sales representatives would have got before selling fractional memberships; and*
- *how the sales representatives would have framed the Supplier's multimedia presentation (i.e., the ESA) during the sale of fractional memberships to prospective members – including Ms E and Mr S and their FPOC2.*

The "Game Plan" on page 23 of the Fractional Club Training Manual indicates that, of the first 12 to 25 minutes, most of that time would have been spent taking prospective members through a comparison between "renting" and "owning" along with how membership of the FPOC2 worked and what it was intended to achieve.

Page 32 of the Fractional Club Training Manual covered how the Supplier's sales representatives should address that comparison in more detail – indicating that they would have tried to demonstrate that there were financial advantages to owning property, over 10 years for example, rather than renting:



- Re-visit the idea of renting a house and talk them through the example of renting a home for £500 highlighting the fact of no return
- Refer to their decision to purchase a property as it made more financial sense to own than rent because, not only are they are building equity in their property, they can also continue to enjoy living in their home once it is paid for
- Ask: "if it cost a little more to own rather than rent would they be happy to pay the extra to own?" *(increase amount of owning and continue to do this for a couple of times until they don't agree.*

CLOSE: So what you are telling me is that, as long as it's comfortably affordable, you would always choose to own rather than rent, is that correct?

LINK: Now let me show you the relevance this has when it comes to your holidays because what you are currently doing is …

CLOSE:

Indeed, one of the advantages of ownership referred to in the slide above is that it makes more financial sense than renting because owners "are building equity in their property". And as an owner's equity in their property is built over time as the value of the asset increases relative to the size of the mortgage secured against it, one of the advantages of ownership over renting was portrayed in terms that played on the opportunity ownership gave prospective members of the FPOC2 to accumulate wealth over time.

I acknowledge that the slides don't include express reference to the "investment" benefit of ownership. But the description alludes to much the same concept. It was simply rephrased in the language of "building equity". And as I've said, Ms E and Mr S had already been through a similar presentation two years earlier where the fractional membership was expressly described as an "investment". And with that being the case, it seems to me that the approach to marketing FPOC2 membership was, like FPOC, to strongly imply that 'owning' fractional points was a way of building wealth over time, similar to home ownership.

By page 68 of the Fractional Training Manual, sales representatives were moved on to the holiday budget of prospective members. Included in the ESA were a number of holiday comparisons. It isn't entirely clear to me what the relevant parts of the ESA were designed to show prospective members, but it seems that prospective members would have been shown that there was the prospect of a "return".

"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 got a small part of your initial outlay, 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 this 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 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 FPOC2 membership as:

(1) *The right to receive holiday rights for 19 years whose market value significantly exceeds the costs to a FPOC2 member; plus*

(2) *A significant financial return at the end of the membership term.*

And to consumers (like Ms E and Mr S) who were looking to buy holidays anyway, the comparison the slides make between the costs of FPOC2 membership and the higher cost of buying holidays on the open market was likely to have suggested to them that the financial return was in fact an overall profit.

And when thinking about what was likely to have happened in 2014 it is important to consider what Ms E and Mr S gained when they traded in their FPOC for the FPOC2 membership. They had 4,140 fractional points, and only got an additional 50 from the purchase, with a new allocated property, and paid £6,850 for this. So, the allocated property connected to the FPOC2 membership was plainly a major part of the product's features and, in that instance, is a justification for the price of Ms E and Mr S's FPOC2 membership.

The investment element of all of the fractional memberships was plainly a major part of its rationale and justification for their cost. And as the memberships were designed to offer members a way of making a financial return from the money they invested – whether or not, like every investment, the return was more, less or the same as the sum invested - it would not have made much sense if the Supplier included the features in the product without relying on them to promote sales, especially when the reality was that the principal benefit of the move from VC to FPOC, and then in upgrading to FPOC2 and the Signature Collection were its investment element i.e., the share in the net sale proceeds of the associated Allocated Property.

Further, I find it fanciful that the Supplier would not have highlighted the possible returns available to Ms E and Mr S when selling Signature Collection membership to them given that they already had a fractional membership (FPOC2), and were trading in one of their fractions to make the purchase.

The Supplier has pointed to the contemporaneous sale documents which it says shows that it didn't present the Signature Collection membership as an investment. But these disclaimers were contained in documents which were given to Ms E and Mr S to sign after they had been through the sales presentation, and after they had agreed to make the purchase on the basis of the presentation and what they had been told by the Supplier. But it's ultimately difficult to explain why it was necessary to include such disclaimers if there wasn't a very real risk of the Supplier marketing and selling membership as an investment, given the difficulty of articulating the benefit of fractional ownership in a way that distinguishes it from other timeshares from the viewpoint of prospective members.

So, when bearing this in mind, and given what I've said about the way I think their FPOC and FPOC2 memberships were sold and/or marketed to them in 2012 and 2014 respectively, I

think it is likely that, on the balance of probabilities, the Supplier's sales representative led Ms E and Mr S to believe that the Signature Collection membership, which was an upgrade of their FPOC2, was also an investment that may lead to a financial gain (i.e., a profit) in the future.

And with that being the case, I do not find Ms E and Mr S either implausible or hard to believe when they say:

> *"The representatives advised that they now had suites available for fractional investment. The suites were a more lucrative investment and would give us an excellent return on our monies. Additionally they were very sought after and would sell easily."*

On the contrary, given everything I have seen so far, I think that is likely to be what Ms E and Mr S were led to believe by the Supplier at the relevant time. And for that reason, I think the Supplier breached Regulation 14(3) of the Timeshare Regulations at the Time of Sale.

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

Having found that the Supplier breached Regulation 14(3) of the Timeshare Regulations at the Time of Sale, I now need to consider what impact that breach had on the fairness of the credit relationship between Ms E and the Lender under the Credit Agreement and related Purchase Agreement, as the case law on Section 140A makes it clear that regulatory breaches do not automatically create unfairness for the purposes of that provision. Such breaches and their consequences (if there are any) must be considered in the round, rather than in a narrow or technical way.

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

On my reading of Ms E and Mr S's testimony, the prospect of a financial gain from their fractional memberships was an important and motivating factor when they decided to go ahead with each purchase. It seems to me that it is likely, from a combination of what they would likely have been told, what they have said happened, and what they actually did, that all of their fractional membership purchases were following the same pattern and overall aim, and were all linked to the potential profit at the end of each of the membership terms. So, I think it likely that the continuing investment aim and potential profit from the new Allocated Property was what they were referring to in their statement when they said:

> *"We were offered a good price if we purchased on the day. Believing that we would make a good return on the sale we decided to make a final investment..."*

That doesn't mean they were not interested in holidays. Their own testimony and holiday reservation history demonstrates that they quite clearly were, which is unsurprising given the nature of the product at the centre of this complaint. And as I've said, the Signature Collection afforded Ms E and Mr S the guaranteed right to stay in their Allocated Property on their set week every other year, and the property was apparently more luxurious and better appointed than that available through their FPOC2. But as Ms E and Mr S say (plausibly in my view) that Fractional Club membership was marketed and sold to them at the Time of Sale as something that offered them more than just holiday rights, on the balance of probabilities, I think their purchase was motivated by their share in the Allocated Property and the possibility of a profit.

Ms E and Mr S have not said or suggested, for example, that they would have pressed

ahead with the purchase in question had the Supplier not led them to believe that Signature Collection membership was an appealing investment opportunity. And as Ms E faced the prospect of borrowing and repaying a substantial sum of money while subjecting herself and Mr S to long-term financial commitments, had they not been encouraged by the prospect of a financial gain from membership of the Signature Collection, I'm not persuaded that they would have pressed ahead with their purchase regardless.

And with that being the case, I think the Supplier's breach of Regulation 14(3) was material to the decision they ultimately made.

Conclusion

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

I then set out what I considered to be a fair and reasonable way for the Lender to calculate and pay fair compensation to Ms E.

The responses to the provisional decision

The PR, on Ms E's behalf, accepted what I had said in the PD. But the Lender did not accept it and set out why it thought the complaint should not be upheld.

It said that it did not agree that Ms E was motivated by financial gain, and did not accept that any alleged breach of Regulation 14(3) by the Supplier was material to Ms E and Mr S's decision to purchase.

It began by considering the statement from Ms E:

- It disagreed that the statement from Ms E could be relied on. It was likely that the contents were influenced by the PR, potentially to achieve a favourable outcome.
- The Statement lacks any description of the presentations attended or specific recollections of what was said and by whom.
- The absence of detail, combined with the likeness in claims to other statements produced by the PR, strongly suggests a template approach rather than a genuinely personal account from Ms E.
- Whilst it s not unusual for a PR to assist in preparing a statement, this introduces a clear possibility of influence and guidance throughout the process. Therefore, the reliability and independence of the statement should be treated with more caution than it appears to have been in this case.

It then considered Ms E's motivation to make the purchase:

- The suggestion that Ms E purchased the Signature Collection membership because she was motivated by financial gain does not appear logical.
- Ms E claimed her previous fractional purchases were investments that offered the potential for profit once the allocated property was sold. But as noted in the PD, the Signature Collection operated differently from her earlier fractional memberships, as it provided a fixed week in a more luxurious, higher-standard apartment. However, when acquiring the Signature Collection membership, Ms E's overall shareholding in the allocated properties actually decreased.

The Lender concluded by saying that, given the above, it is far more plausible that Ms E chose to purchase the Signature Collection because it offered something that her previous memberships could not – guaranteed weeks in a superior, more luxurious apartment.

As the deadline for further submissions has now passed, the complaint has come back to me for a final decision.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

And having done so, and having considered everything that the Lender has said in response to my provisional decision, I am satisfied that this complaint ought to be upheld, for the same reasons as set out in the provisional decision.

I will, however, address the points the Lender made in response.

The Lender has concerns that Ms E may have been led by the PR in her statement, and that what has been written should be treated with more caution than it appears to have been. But I addressed this matter in the PD, when I acknowledged that it seemed likely that the statement had been prepared and written by the PR during a telephone conversation with Ms E. So, I recognised that there was a risk that she had been guided through the process, with the associated risk that what was written may not be her own specific recollections.

But having considered this again, in light of what the Lender has said, I am still of the opinion that what is written in the statement is a record of Ms E and Mr S's recollections of their relationship with the Supplier, for the reasons I set out in the PD.

I also acknowledge that the statement lacks specific details, such as who it was that spoke to them, and what they exactly said. But remembering the names of the salespersons involved, or recalling the precise words they used during a sales process that occurred over two years earlier is not unusual, and does not mean that I should discount what she has said here.

Having considered everything, and whilst being cognisant that memories do fade over time, I remain of the opinion that it is safe for me to place weight on what Ms E has said happened at the Time of Sale. And having done so, and when taking into account all of the circumstances, I am satisfied that, on the balance of probabilities, the Lender breached Regulation 14(3) of the Timeshare Regulations when it sold and/or marketed the Signature Collection to Ms E and Mr S at the Time of Sale.

I have also considered what the Lender has said about the nature of the Signature Collection, and that the differences in what it provided, when compared to their existing membership, were the reasons Ms E and Mr S bought it. And it said that Ms E's overall shareholding in property actually decreased when they purchased the Signature Collection.

But I don't agree. Ms E and Mr S traded in one of their four fractions (810 fractional points) towards this new membership. Although this new membership was bi-annual, it still represented 2,330 bi-annual fractional points, and a new fraction in a new property. So, I don't see how Ms E and Mr S could have considered that to be a reduction in their ownership. And in any case, this being a bi-annual membership meant that the number of weeks' holidays that Ms E and Mr S could take with their memberships actually reduced, so this strengthens my opinion that it was likely the eventual potential profit it could bring them that was the driver behind their reasons to buy it.

But I do acknowledge, as I did in the PD, that the Signature Collection offered members the right to guaranteed availability in a more luxurious apartment, and Ms E says as much (plausibly in my view) in her statement:

> *"We could use these luxurious suites for our holidays every second year until the sale date."*

But she goes on to say:

> *"We were offered a good price if we purchased on the day. Believing that we would make a good return on the sale we decided to make a final investment…"*

This, in my opinion, sets out the reason they decided to make the purchase, and I find this persuasive.

I said in my PD, and I remain of the opinion now, that on my reading of Ms E and Mr S's testimony, the prospect of a financial gain from their fractional memberships was an important and motivating factor when they decided to go ahead with each purchase. It seems to me that it is likely, from a combination of what they would likely have been told, what they have said happened, and what they actually did, that all of their fractional membership purchases (including the Signature Collection) were following the same pattern and overall aim, and were all linked to the potential profit at the end of each of the membership terms. So, I think it likely that the continuing investment aim and potential profit from the new Allocated Property was their motivation when they decided to purchase the Signature Collection membership.

And with that being the case, I am satisfied that the Supplier's breach of Regulation 14(3) of the Timeshare Regulations was material to the purchasing decision Ms E and Mr S ultimately made, so Ms E's associated credit relationship with the Lender was unfair to her for the purposes of Section 140A of the CCA.

As such, it is fair and reasonable that I uphold this complaint.

Putting things right

Neither the Lender nor the PR made any representations regarding my proposed fair compensation, so I see no reason to depart from what I set out in the PD. For clarity, this is what I am directing the Lender to do, and why:

Fair compensation

Having found that Ms E and Mr S would not have agreed to purchase Signature Collection 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 Ms E was unfair under Section 140A of the CCA, I think it would be fair and reasonable to put her back in the position she would have been in had they not purchased the Signature Collection membership (i.e., not entered into the Purchase Agreement), and therefore not entered into the Credit Agreement. This is on the proviso that Ms E and Mr S agree to assign to the Lender their 2,330 Signature Collection fractional points, or hold them on trust for the Lender if that can be achieved.

Ms E and Mr S were existing FPOC2 members, and their membership was partly traded in against the purchase price of the Signature Collection membership. Under FPOC2, they had 4,190 fractional points. And, like their Signature Collection membership, they had to pay

annual management charges as part of their FPOC2 membership. So, had Ms E and Mr S not purchased the Signature Collection, they would have always been responsible for paying an annual management charge of some sort. With that being the case, any refund of the annual management charges paid by Ms E and Mr S from the Time of Sale as part of the Signature Collection should amount only to the difference between those charges and the annual management charges they would have paid as part of their FPOC Membership with 4,190 fractional points.

I'm conscious that, under their FPOC2 membership, Ms E and Mr S were entitled to a share in an allocated property, and that was changed when they traded in 810 fractional points. So, putting them back in the position they would have been when holding their FPOC2 membership (i.e. by reinstating their FPOC2 membership as it was) is unlikely to be possible. But that is not necessary anyway, because a complaint about that membership (and the associated loan) has been considered and upheld by me in a separate final decision. So, the compensation I am directing the loan provider to pay Ms E in that complaint (as the sole borrower) will take the loss of their FPOC2 membership into account, so it does not need to be further considered here.

So, here's what I am directing the Lender to do to compensate Ms E with that being the case – whether or not a court would award such compensation:

(1) The Lender should refund Ms E's repayments to it under the Credit Agreement, including any sums paid to settle the debt.

(2) In addition to (1), the Lender should also refund the difference between the annual management charges paid after the Time of Sale under the Signature Collection and what Ms E and Mr S's annual management charges would have been under FPOC2 had they not purchased the Signature Collection membership.

(3) The Lender can deduct:

   i. The value of any promotional giveaways that Ms E and Mr S used or took advantage of; and

   ii. The market value of the holidays* Ms E and/or Mr S took using the Signature Collection membership *if* the points value of the holiday(s) taken amounted to more than the total number of fractional points they would have been entitled to use at the time of the holiday(s) as ongoing FPOC2 members. However, this deduction should be proportionate and relate only to the additional fractional points that were required to take the holiday(s) in question.

   For example, if Ms E and/or Mr S took a holiday worth 2,550 fractional points after the Time of Sale (using their Signature Collection points) and they would have been entitled to use a total of 2,500 fractional points under FPOC2 membership at the relevant time, any deduction for the market value of that holiday should relate only to the 50 additional fractional points that were required to take it. But if they would have been entitled to use 2,600 fractional points under FPOC2, for instance, there shouldn't be a deduction for the market value of the relevant holiday.

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

(4) Simple interest** at 8% per annum should be added to each of the Net Repayments from the date each one was made until the date the Lender settles this complaint.

(5) The Lender should remove any adverse information recorded on Ms E's credit file in connection with the Credit Agreement reported within six years of this decision.

(6) If Ms E and Mr S's Signature Collection membership is still in place at the time of this decision, as long as they agree to hold the benefit of their interest in the Allocated

Property for the Lender (or assign it to the Lender if that can be achieved), the Lender must indemnify them against all ongoing liabilities as a result of their Signature Collection membership.

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

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

My final decision

I uphold this complaint and direct Mitsubishi HC Capital UK Plc trading as Novuna Personal Finance to calculate and pay fair compensation to Ms E as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms E to accept or reject my decision before 12 December 2025.

Chris Riggs
Ombudsman