DRN-5972914

The complaint

Mr M's complaint is, in essence, that Mitsubishi HC Capital UK Plc 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 M was the member of a timeshare provider (the 'Supplier') – having purchased a number of products from it over time. But the products at the centre of this complaint are his membership of timeshares that I'll call the 'Fractional Club' and the 'Signature Collection' – points in which Mr M purchased on the dates below:

- 1,200 fractional points on 10 June 2015 for £16,585 ('Purchase Agreement 1')
- 1,500 fractional points on 23 June 2016 for £9,575 – having traded in the first lot of 1,200 fractional points. ('Purchase Agreement 2')

(which, when appropriate, I'll simply refer to as the 'Purchase Agreements')

As this complaint is concerned with both purchases I'll refer to them as the 'Times of Sale' for the purposes of my decision.

Fractional Club and Signature Collection membership were asset backed – which meant they gave Mr M more than just holiday rights. They also included a share in the net sale proceeds of a property named on the relevant purchase agreement (which I'll refer to as the 'Allocated Property 1 or 2' or, when appropriate, the 'Allocated Properties') after his membership terms end.

Mr M paid for his fractional points by taking the following amounts of finance from the Lender:

- £16,585 on 10 June 2015 ('Credit Agreement 1')
- £25,712 on 23 June 2016 ('Credit Agreement 2') this was more than the price on Purchase Agreement 2 because it also consolidated Credit Agreement 1.

(which, when appropriate, I'll simply refer to as the ''Credit Agreements')

Mr M – using a professional representative (the 'PR') – wrote to the Lender on 20 February 2020 (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 M's concerns as a complaint and issued its final response letter on20 August 2020, rejecting it on every ground. The complaint was then referred to the Financial Ombudsman Service.

I issued a provisional decision on 14 October 2025 explaining why I didn't plan to uphold Mr M's complaint. 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 do not currently think this complaint should be upheld.

However, before I explain why, I want to make it clear that my role as an Ombudsman is not to address every single point that has been made to date. Instead, it is to decide what is fair and reasonable in the circumstances of this complaint. So, if I have not commented on, or referred to, something that either party has said, that does not mean I have not considered it.

Section 75 of the CCA: the Supplier's misrepresentations at the Times of Sale

The CCA introduced a regime of connected lender liability under section 75 that affords consumers ("debtors") a right of recourse against lenders that provide the finance for the acquisition of goods or services from third-party merchants ("suppliers") in the event that there is an actionable misrepresentation and/or breach of contract by the supplier.

Certain conditions must be met if the protection afforded to consumers is engaged, including, for instance, the cash price of the purchase and the nature of the arrangements between the parties involved in the transaction. The Lender doesn't dispute that the relevant conditions are met. But for reasons I'll come on to below, it isn't necessary to make any formal findings on them here.

It was said in the Letter of Complaint that the Fractional Club and Signature Collection memberships had been misrepresented by the Supplier at the Time of Sale because Mr M was:

(1) *told by the Supplier that they had a guaranteed end date when that was not true.*

(2) *Told by the Supplier that he owned a 'fraction' of the Allocated Properties when that was not true as it was owned by a trustee.*

Neither the PR nor Mr M have set out in any detail what words and/or phrases where allegedly used by the Supplier to misrepresent the Fractional Club and Signature Collection memberships for the reason given in points 1 or 2. However, the PR says that such representations were untrue because the Allocated Properties were legally owned by a trustee and there was no indication of what duty of care it had to actively market and sell the properties. Further, there is no guarantee that any sale will result at all, leaving prospective members to pay their annual management charge for an indefinite and unspecified period.

However, I cannot see why the phrases in points 1 or 2 above would have been untrue at the Time of Sale even if it was said. It seems to me to reflect the main thrust of the contracts Mr M entered into. And while, under the relevant Club Rules, the sale of the Allocated Properties could be postponed for up to two years by the 'Vendor'[1], longer than that if there were problems selling and the 'Owners'[2] agreed, or for an otherwise specified period provided there was unanimous agreement in writing from the Owners, that does not render the representation above untrue. So, I am not persuaded that the representation above constituted a false statement of fact even if it was made.

The PR has raised other matters as potential misrepresentations, but it seems to me that they are not allegations of the Supplier saying something that was untrue. Rather, it is that Mr M wasn't told things about the way the membership worked, for example, that the obligation to pay management fees could be passed on to his children. It seems to me that these are allegations that Mr M wasn't given all the information he needed at the Times of Sale, and I will deal with this further below.

So, while I recognise that Mr M and the PR have concerns about the way in which Fractional Club and Signature Collection membership were sold by the Supplier, when looking at the claims under Section 75 of the CCA, I can only consider whether there was a factual and material misrepresentation by the Supplier. For the reasons I've set out above, I'm not persuaded that there was. And that means that I don't think that the Lender acted unreasonably or unfairly when it dealt with these particular Section 75 claims.

Section 75 of the CCA: the Supplier's Breach of Contract

I have already summarised how Section 75 of the CCA works and why it gives consumers a right of recourse against a lender. So, it is not 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 M said that he could not holiday where and when he wanted to – which, on my reading of the complaint, suggests that the Supplier was not living up to its end of the bargain, potentially breaching the Purchase Agreements.

Yet, like any holiday accommodation, availability was not 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 M 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 have not seen enough to persuade me that the Supplier had breached the terms of the Purchase Agreements.

So, from the evidence I have seen, I do not think the Lender is liable to pay Mr M any compensation for a breach of contract by the Supplier. And with that being the case, I do not 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 unfair credit relationships?

I've already explained why I'm not persuaded that the Fractional Club and Signature Collection memberships were actionably misrepresented by the Supplier at the Times of

[1] Defined in the FPOC Rules as "CLC Resort Developments Limited".
[2] Defined in the FPOC Rules as "a purchaser who has entered into a Purchase Agreement and has been issued with a Fractional Rights Certificate (which shall include the Vendor for such period of time until the maximum number of Fractional Rights have been acquired)."

Sale. But there are other aspects of the sales processes 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 relationships between Mr M and the Lender along with all of the circumstances of the complaint, I don't think the credit relationships between them were likely to have been rendered unfair for the purposes of Section 140A. When coming to that conclusion, and in carrying out my analysis, I have looked at:

1. *The standard of the Supplier's commercial conduct – which includes its sales and marketing practices at the Times of Sale along with any relevant training material;*
2. *The provision of information by the Supplier at the Times 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 Times of Sale;*
4. *The inherent probabilities of the sales given their circumstances; and, when relevant*
5. *Any existing unfairness from a related credit agreement.*

I have then considered the impact of these on the fairness of the relevant credit relationships between Mr M and the Lender.

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

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

The PR says, for instance, that the loan interest was excessive. However, as things currently stand, this doesn't strike me as a reason why this complaint should succeed. I don't think the rate of interest was excessive, compared either to other rates available from other point-of-sale lenders or on the open market, so I can't say it would be fair or reasonable to tell the Lender to do anything because of this.

Overall, therefore, I don't think that Mr M credit relationships with the Lender were rendered unfair to him under Section 140A for the reason above. But there is another reason, perhaps the main reason, why the PR now says the credit relationships with the Lender were unfair to him. And that's the suggestion that the Fractional Club and Signature Collection memberships were 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

The Lender does not dispute, and I am satisfied, that Mr M's Fractional Club and Signature Collection memberships met the definition of a "timeshare contract" and were "regulated contracts" for the purposes of the Timeshare Regulations.

Regulation 14(3) of the Timeshare Regulations prohibited the Supplier from marketing or selling Fractional Club or 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 the PR says that the Supplier did exactly that at the Times of Sale.

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.

Shares in the Allocated Properties clearly constituted investments as they offered Mr M 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 Fractional Club and Signature Collection memberships 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[3].

In other words, the Timeshare Regulations did not ban products such as the Fractional Club. They just regulated how such products were marketed and sold.

To conclude, therefore, that the Fractional Club and Signature Collection memberships were marketed or sold to Mr M 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 the memberships to him as an investment, i.e. told him or led him to believe that Fractional Club and 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 competing evidence in this complaint as to whether Fractional Club and Signature Collection memberships were marketed and/or sold by the Supplier at the Times of Sale as an investment in breach of regulation 14(3) of the Timeshare Regulations.

On the one hand, it is clear that the Supplier made efforts to avoid specifically describing membership of the Fractional Club and Signature Collection as an 'investment' or quantifying to prospective purchasers, such as Mr M, the financial value of their share in the net sales proceeds of the Allocated Properties 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 and Signature Collection memberships as investments. So, I accept that it's equally possible that Fractional Club and Signature Collection membership was marketed and sold to Mr M as an investment in breach of Regulation 14(3).

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

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[3] The PR has argued that Fractional Club membership amounted to an Unregulated Collective Investment Scheme, however this was considered and rejected in the judgment in *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).

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 Times of Sale, I now need to consider what impact such breaches had on the fairness of the credit relationships between Mr M and the Lender under the Credit Agreements and related Purchase Agreements 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 credit relationships between Mr M and the Lender that were 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 Agreements and the Credit Agreements is an important consideration.

But on my reading of the evidence before me, the prospect of a financial gain from Fractional Club and Signature Collection memberships was not an important and motivating factor when Mr M decided to go ahead with his purchases. For example, in a (albeit undated) statement of truth provided to this service by the PR on 28 July 2023 and in telephone call notes the PR said were taken from a call with him in September 2019, he makes no mention of having been promised either a profit or financial gain from either membership at the Times of Sale. So, it seems unlikely to me that such things were important to him when he made his decisions to purchase or its likely he would have placed more emphasis on them in his recollections

Mr M talks about an "investment for his family" in the statement of truth when explaining some of his motivations for the purchase of Signature Collection membership. But this appears to me to be in a rather different context to that of an expectation or hope of a profit or financial gain as he primarily references the quality of accommodation he was hoping to benefit from in the future. Indeed, in his statement of truth he said "On return to the office my husband and I were so impressed with the new "Signature Collection" we decided to sign up to this membership".

That doesn't mean Mr M wasn't interested in a share in the Allocated Properties. After all, that wouldn't be surprising given the nature of the product at the centre of this complaint. But as Mr M himself doesn't persuade me that his purchases were motivated by his shares in the Allocated Properties and the possibility of a profit, I don't think breaches of Regulation 14(3) by the Supplier were likely to have been material to the decisions Mr M ultimately made.

On balance, therefore, even if the Supplier had marketed or sold Fractional Club and Signature Collection membership as an investment in breach of Regulation 14(3) of the Timeshare Regulations, I am not persuaded that Mr M's decisions to purchase them at the Times of Sale were 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 purchases whether or not there had been a breach of Regulation 14(3). And for that reason, I do not think the credit relationships between Mr M and the Lender were unfair to him even if the Supplier had breached Regulation 14(3).

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

The PR says that Mr M was not given sufficient information at the Times of Sale by the Supplier in order to make an informed choice.

As I've already indicated, the case law on Section 140A makes it clear that it does not

automatically follow that regulatory breaches create unfairness for the purposes of the unfair relationship provisions. The extent to which such mistakes render a credit relationship unfair must also be determined according to their impact on the complainant.

I acknowledge that it is also possible that the Supplier did not give Mr M sufficient information, in good time, on the various charges he could have been subject to as a Fractional Club member in order to satisfy the requirements of Regulation 12 of the Timeshare Regulations (which was concerned with the provision of 'key information'). But even if that was the case, I cannot see that the ongoing costs of membership were applied unfairly in practice. And as neither Mr M nor the PR have persuaded me that he would not have pressed ahead with his purchase had the finer details of the Fractional Club's ongoing costs been disclosed by the Supplier in compliance with Regulation 12, I cannot see why any failings in that regard are likely to be material to the outcome of this complaint given its fact and circumstances.

As for the PR's argument that Mr M's heirs would inherit the on-going management charges, I fail to see how that could be the case or that it could have led to an unfairness that warrants a remedy.

In conclusion, as things currently stand, I do not think that the Lender acted unfairly or unreasonably when it dealt with the relevant Section 75 claims, and I am not persuaded that the Lender was party to credit relationships with Mr M under the Credit Agreements that were 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."

The PR didn't accept my provisional decision and provided further comments and evidence it wished me to consider.

The Lender did not respond.

I am 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 no different to that 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 I would add that the following regulatory rules/guidance are also relevant:

The Consumer Credit Sourcebook ('CONC') – Found in the Financial Conduct Authority's (the 'FCA') Handbook of Rules and Guidance
Below are the most relevant provisions and/or guidance as they were at the relevant time.

- CONC 3.7.3 [R]
- CONC 4.5.3 [R]
- CONC 4.5.2 [G]

The FCA's Principles

The rules on consumer credit sit alongside the wider obligations of firms, such as the Principles for Businesses ('PRIN'). Set out below are those that are most relevant to this complaint:

- Principle 6
- Principle 7
- Principle 8

What I've decided – and why

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

Having done so, I've reached the same decision as that which I outlined in my provisional findings, for broadly the same reasons.

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

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

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

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

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

The PR has provided some further comments and evidence (including observations about the training material used by the Supplier at the Times of Sale) which in my view relate to whether the Fractional Club and Signature Collection memberships were marketed as investments in breach of the prohibition in Regulation 14(3) of the Timeshare Regulations. However, as I explained in my provisional decision, while the Supplier's sales processes left open the possibility that the sales representative may have positioned Fractional Club and Signature Collection membership as an investment, it isn't necessary to make a finding on

this as it is not determinative of the outcome of the complaint. I explained that Regulatory breaches do not automatically create unfairness and that such breaches and their consequences (if there are any) must be considered in the round, rather than in a narrow or technical way.

The PR's comments and evidence in this respect do not persuade me that I should uphold Mr M's complaint because they do not make me think it's any more likely that the Supplier's breaches of Regulation 14(3) led Mr M to enter into the Purchase Agreement and the Credit Agreement.

The PR has also provided its further thoughts as to Mr M's likely motivations for purchasing Fractional Club and Signature Collection membership and whether any potential breach of Regulation 14(3) by the Supplier led Mr M to enter into the purchase agreement and Credit Agreement. I recognise the PR has interpreted Mr M's testimony differently to how I have and thinks it points to him having been motivated by the prospect of a financial gain from Fractional Club and Signature Collection membership.

In my provisional decision I explained the reasons why I didn't think Mr M's purchase was motivated by the prospect of a financial gain (i.e., a profit). And although I have carefully considered the PR's arguments in response to this, I'm not persuaded the conclusion I reached on this point was unfair or unreasonable.

My reading of Mr M's testimony is still that it didn't contain any suggestion of having been motivated by the prospect of a profit or financial gain from Fractional Club or Signature Collection memberships. Indeed, no mention is made of any investment element of Fractional Club membership in Mr M's testimony in respect of the 2015 sale and no further comments have been provided on this particular sale by the PR.

The PR said, when commenting on the 2016 sale, that it is *"inconceivable that* (Mr M) *would have taken out a long-term commitment of the bank loan to purchase a Fractional for £9,575 just to purchase 300 Fractional points for improved holiday rights without increasing the number of weeks".* However, as I pointed out in my provisional decision, Mr M said he was *"so impressed"* by the Signature Collection, (having explained how *"luxurious and impressive*" he found the accommodation he'd been shown to be) he decided to sign up. So, while I agree it was more than just the increase in the number of points that was likely to have motivated Mr M's purchase of Signature Collection membership, I think it was the prospect of better-quality accommodation from the right to use the Allocated Property that was most likely to have been important to him based on what he's said.

The PR also said that Mr M's statement in his testimony that the purchase of Signature Collection was an "investment for his family" implies a financial or asset-based consideration. I accept that is one possible interpretation. However, given Mr M's testimony makes no direct reference to the Supplier having said or done anything that led him to believe either membership offered the prospect of a profit or financial gain, I think his statement is too ambiguous to rely on as evidence as to whether, and to what degree, he was influenced by being told that he could sell the Allocated Property at a profit at the end of his memberships.

Finally, I agree with PR that just because a purchaser was interested in taking holidays with the Supplier, that doesn't mean they can't also have been motivated by any investment element – indeed I would find it surprising if any members were not interested in taking holidays, given the nature of the product. However, for the reasons set out in this decision, I do not find such investment motivation.

So, ultimately, for the above reasons, along with those I already explained in my provisional decision, I remain unpersuaded that any breach of Regulation 14(3) was material to Mr M's purchasing decision. And for that reason, I do not think the credit relationship between Mr M and the Lender was unfair to him even if the Supplier had breached Regulation 14(3).

S140A conclusion

Given all of the factors I've looked at in this part of my decision, including the relevant relationships, arrangements and payments between Mr M, the Lender and the Supplier and having taken all of them into account, I'm not persuaded that the credit relationship between him and the Lender under the Credit Agreement and related Purchase Agreement was unfair to him. So, I don't think it is fair or reasonable that I uphold this complaint on that basis.

Conclusion

In conclusion, given the facts and circumstances of this complaint, I do not think that the Lender acted unfairly or unreasonably when it dealt with Mr M's Section 75 claims and I am not persuaded that the Lender was party to a credit relationship with him under the Credit Agreement that was unfair to him for the purposes of Section 140A of the CCA. And having taken everything into account, I see no other reason why it would be fair or reasonable to direct the Lender to compensate him.

My final decision

For the reasons I have explained, my final decision is that I do not uphold Mr M's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 12 January 2026.

Michael Ball
Ombudsman