DRN-5988055

The complaint

Ms F's complaint, in essence, is that Mitsubishi HC Capital UK PLC (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 a claim under Section 75 of the CCA.

What happened

Ms F bought membership of a timeshare (the Fractional Club) from a from a timeshare provider (the Supplier) on 11 July 2018 (the Time of Sale). The purchase was financed by a loan agreement between Ms F and the Lender. (The loan was taken out with Hitachi Capital (UK) PLC trading as Hitachi Personal Finance – a previous business name of the Lender.) The purchase price of the membership was £18,922, and no deposit was payable meaning the entire purchase was financed through the loan.

The type of timeshare bought by Ms F was asset backed, meaning it gave her more than just holiday rights. It included a share in the net sale proceeds of a property when her membership term ends. This property (the 'Allocated Property') was named on her Purchase Agreement.

Ms F, with the help of a professional representative (PR), wrote to the Lender on 4 November 2021 (the Letter of Complaint) to complain about:

1. Misrepresentations by the Supplier at The Time of Sale giving them a claim against the Lender under Section 75 of the CCA which the Lender then failed to accept and pay.
2. The Lender being a party to an unfair credit relationship under the Credit Agreement and related Purchase Agreement for the purposes of Section 140A of the CCA.
3. The Credit Agreement being unenforceable because it was not arranged by a credit broker authorised by the Financial Conduct Authority (the FCA) to carry out such an activity.
4. The Lender's decision to lend the money which amounted to irresponsible lending.

The Lender dealt with Ms F's concerns as a complaint and issued its final response letter on 17 December 2021, rejecting it on every ground. The complaint was then referred to the Financial Ombudsman Service. It was assessed by an Investigator who rejected the complaint on its merits.

Ms F didn't agree and asked for the complaint to be passed to an Ombudsman for a final decision.

I considered the matter and issued a provisional decision (the 'PD') dated 13 October 2025. In that decision, I said: I intend to not uphold this complaint. If there is any further information on this complaint that Ms F or Mitsubishi HC Capital UK Plc wish to provide, I would invite them to do so in response to this provisional decision.

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

Neither the Lender nor PR responded to the PD and so I am now finalising my decision.

The legal and regulatory context

The legal and regulatory context that I think is relevant to this complaint is, in many ways. no different to that shared in several hundred published ombudsman decisions on very similar complaints – which can be found on the Financial Ombudsman Service's website. And with that being the case, it is not necessary to set out that context in detail here. But I would add that the following are also relevant:

- The Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010 (the Timeshare Regulations)
- The Resort Development Organisation Code of Conduct (the RDO Code)
- 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] (Shawbrook & BPF v FOS)

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.

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.

As outlined in my PD, the PR originally raised various points of complaint, all of which I addressed at that time. But they haven't made any further comments since they have not responded to my PD. Indeed, they haven't said they disagree with any of my provisional conclusions. And since I haven't been provided with anything more in relation to those other points by either party, I see no reason to change my conclusions in relation to them as set out in my PD. So, in the absence of any response from the parties, I've reached the same decision as that which I outlined in my provisional findings, for the same reasons.

I must also make it clear that whilst Ms F's written statement refers to two sales in 2017 and 2018, the complaint only seems to concern the most recent sale given what I've read in the

Letter of Complaint and Complaint Form refer to as the date of sale. I am therefore only dealing with that sale.

Misrepresentation and breach of contract

As Ms F now knows, under Section 75 of the CCA the concept of connected lender liability was introduced. This allows consumers like Ms F a right of recourse against a lender 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, set out in the CCA, must be met if this protection is to be engaged. Here the Lender doesn't dispute that these are met, and I'm satisfied that they are.

It was said that Fractional Club membership had been misrepresented by the Supplier at the Time of Sale because Ms F was:

1. told that she had purchased an investment that would "considerably appreciate in value".
2. promised a considerable return on her investment because she was told that she would own a share in a property that would considerably increase in value.
3. told that she could sell her Fractional Club membership to the Supplier or easily sell it to third parties at a profit.
4. made to believe that she would have access to 'the holiday's apartment' at any time all around the year.

In my view, the first two points are not misrepresentations, because even if such representations had been made by the Supplier, telling prospective members that they were investing their money because they were buying a fraction or share of one of the Supplier's properties was not untrue. Further, even if the Supplier's sales representatives suggested that the share in question would considerably increase in value, that is nothing more than an honestly held opinion. I have seen no evidence which could persuade me that any relevant sales representative said something more than an opinion, something which amounted to a statement of fact that they did not hold or could not have reasonably held.

Turning to third point, the Purchase Agreement Ms F signed included a declaration to the effect that she understood that the Supplier would not repurchase the Fractional Club membership or act as an agent in a sale. And I have seen no evidence that Ms F was unable to sell her membership to a third party if she wished to, so her statement that she could not is untrue. It is highly unlikely therefore that the Supplier would then have made statements in such clear contradiction to the terms and conditions provided to Ms F at the Time of Sale.

As to the final point in the Letter of Complaint, I have interpreted this as meaning Ms F thought she would be able to stay at the Allocated Property whenever she wanted, which of course was not correct. It could however mean that she thought availability of accommodation more broadly was guaranteed. The Purchase Agreement however clearly states that her Fractional Points 'do not transfer or grant the right of use to any allocated property'. In the light of this I once again find it unlikely that the Supplier would have made such a clearly contradictory statement to Ms F at the Time of Sale.

So, while I recognise that Ms F has concerns about the way in which Fractional Club membership was sold by the Supplier, when looking at the claim under Section 75 of the CCA, I can only consider whether there was a 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 in dealing with this Section 75 claim.

Section 140A CCA claims

I have considered the entirety of the credit relationship between Ms F and the Lender and I don't think it was likely to have been rendered unfair for the purposes of Section 140A. In 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 including its relevant training material.
2. The provision of information by the Supplier at the Time of Sale, including the contractual documentation and disclaimers made by the Supplier.
3. Evidence provided by both parties on what was likely to have been said and/or done at the Time of Sale.
4. The inherent probabilities of the sale given its circumstances.

I have considered the impact of these on the fairness of the credit relationship between Ms F and the Lender. Ms F's complaint about the Lender being party to an unfair credit relationship was made for several reasons.

The PR says Ms F doesn't remember any affordability assessment being carried out before the Lender lent to Ms F. Nothing has been said by Ms F about why she feels the lending in question was unaffordable given her financial circumstances at the Time of Sale. However, even if the Lender didn't do all that it should have done when it agreed to lend, (although I'm not making any such finding) I would still have to be satisfied that the lending was unaffordable for her. I would then have to conclude that she lost out as a result and that the credit relationship with the Lender was unfair to her for this reason. But I haven't seen anything to persuade me that this was the case at the Time of Sale, and so I am not satisfied that the lending was unaffordable for Ms F as has been claimed.

Connected to this is the assertion by the PR that the Credit Agreement was arranged by an unauthorised credit broker, and therefore in breach of the Financial Services and Markets Act 2000 (FSMA). In short, the argument is that Lender wasn't permitted to enforce the Credit Agreement. Credit brokering was an activity overseen by the Financial Conduct Authority at the Time of Sale, and I can see the Supplier held the relevant authority to carry out this activity. So, I don't agree the Lender has done something wrong by entering into the loan agreement using the Supplier as a credit intermediary. In any event Ms F knew how much she was borrowing and repaying each month, who she was borrowing from and that she was borrowing money to pay for Fractional Club membership.

So, even if the Credit Agreement was arranged by a broker that didn't have the necessary permission to do so (although I'm not making any such finding), that hasn't led to any financial loss for Ms F which could then lead me to say that the credit relationship was unfair.

The PR also asserts that there were one or more unfair contract terms in the Purchase Agreement making specific reference to 'Clause D' of the agreement which deals with 'Default'. But I haven't seen any evidence that this or any other terms caused her detriment and so I can't say that any of the terms governing Fractional Club membership are likely to have led to an unfairness that warrants a remedy.

I note Ms F said the sales process went on for a lot longer than she had anticipated and felt pressured into signing the agreement. And I know she says that she hesitated several times

but was then met with several irresistible offers and attractive incentives. But beyond that she says little about what was said and/or done by the Supplier during the sales presentation that made her feel she had no choice but to purchase Fractional Club membership when she simply did not want to. She was also given a 14-day cooling off period and has not provided any explanation for why she did not cancel the membership once she was away from the pressured environment.

In my view there is insufficient evidence to persuade me that Ms F made the decision to purchase Fractional Club membership because her ability to exercise that choice was significantly impaired by pressure from the Supplier.

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

The Lender does not dispute that Ms F's Fractional Club membership met the definition of a "timeshare contract" and was a "regulated contract" for the purposes of the Timeshare Regulations. I accept it was.

Regulation 14(3) of those regulations prohibits a Supplier from marketing or selling Fractional Club membership as an investment. At the Time of Sale the provision said: '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.'

The PR says the Supplier told Ms F that Fractional Club membership was the type of investment that would only 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.

A share in the Allocated Property clearly constituted an investment as it offered Ms F a potential financial return, which like all investments may be more or less than initially invested. However, just because a Fractional Club membership includes an investment element, that does not mean the prohibition in Regulation 14(3) has been breached. That provision prohibits the marketing and selling of a timeshare contract as an investment. It doesn't prohibit the existence of an investment element in such a contract. All the Timeshare Regulations do, in this respect, is regulate how such products were marketed and sold, not ban them.

From my reading of the evidence, I can see that the Supplier made efforts to avoid specifically describing membership of the Fractional Club as an 'investment' or quantifying the financial value of a share in the net sales proceeds of the Allocated Property, along with the investment considerations, risks and rewards attached to them.

I can also see that the Supplier's sales process allowed for the possibility that the sales representative may have positioned Fractional Club membership as an investment. So, it's equally possible that Fractional Club membership was marketed and sold to Ms F 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. That is because I have to consider what the impact of any breach had on the fairness of the credit relationship between Ms F and the Lender under the Credit Agreement and related Purchase Agreement. 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.

So, before I can conclude that a breach of Regulation 14(3) led to an unfair credit relationship between Ms F and the Lender, warranting relief as a result, an important consideration must be whether the Supplier's breach of Regulation 14(3) led her to enter into the Purchase Agreement and the Credit Agreement.

Was the credit relationship between the Lender and Ms F rendered unfair to her?

The Letter of Complaint did not include any personal testimony from Ms F about what did or did not happen. The allegation that there was a breach of Regulation 14(3) was made in general terms. The PR provided this service with a copy of a consumer's declaration in November 2023. This document is undated and unsigned although it is headed to be a Declaration by Ms F and another person, most likely her partner. In it, Ms F says that the Supplier's sales representatives,

> 'induced that the purchase was a good property investment and since we travel a lot and we can have great savings on our holidays as well as owning part of a property in a hotel if we sign a contract for a Timeshare'.

And

> 'We were told that we could exchange out Timeshare anywhere in the world anytime easily though online booking via CLC website. We tried booking online but in order to make an exchange , you need to be an Interval Gold Member or Interval Platinum member to avail such benefits'.

And

> 'Our decision to the first and second Fractional Property Ownership Richts purchase were based on attractive promises that were given during the presentation such as, great savings with accommodation since we travel 2-3 times a year, easy online booking anywhere anytime in the world.

Ms F's declaration focuses on her interest, at the Time of Sale, in taking family holidays with the Supplier and how, in various ways, her experience hasn't lived up to expectations. So, on my reading of the evidence before me, the prospect of a financial gain from Fractional Club membership was not an important and motivating factor when she decided to go ahead with her purchase.

As Ms F doesn't persuade me that her purchase was motivated by her share in the Allocated Property and the possibility of a profit, I don't think a breach of Regulation 14(3) by the Supplier was likely to have been material to the decision Ms F ultimately made. I think the evidence suggests she would have pressed ahead with her purchase whether or not there had been a breach of Regulation 14(3). And for that reason, I do not think the credit relationship between Ms F and the Lender was unfair to her even if the Supplier had breached Regulation 14(3).

The effect of the Supplier entering liquidation

PR says the sales companies of the Supplier started liquidation proceedings in December 2020 and this has deprived Ms F of the opportunity to recover monies through the Spanish Court. But PR hasn't explained why this is relevant to the complaint about the Lender. In any event, it is unclear how this action could have resulted in any unfairness in the relationship between Ms F and the Lender.

Conclusion

In conclusion, given the facts and circumstances of this complaint, I do not think the Lender has acted unfairly or unreasonably in dealing with Ms F's Section 75 CCA claim, and I am not persuaded that the Lender was party to a credit relationship with her that was unfair for the purposes of Section 140A of the CCA. As a result, I don't think her complaint should be upheld.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms F to accept or reject my decision before 25 January 2026.

Jonathan Willis
Ombudsman