

The complaint

Mr E's complaint is, in essence, that Mitsubishi HC Capital UK Plc (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 E and his late wife purchased membership of a timeshare (the 'Fractional Club') from a timeshare provider (the 'Supplier') on 13 August 2014 (the 'Time of Sale'). He entered into an agreement with the Supplier to trade in his existing timeshare points and buy 3,100 fractional points at a cost of £4,625 (the 'Purchase Agreement').

Fractional Club membership was asset backed – which meant it gave Mr E more than just holiday rights. It also included a share in the net sale proceeds of a property named on his Purchase Agreement (the 'Allocated Property') after his membership term ends.

Mr E paid for his Fractional Club membership by taking finance of £4,625 from the Lender (the 'Credit Agreement').

Mr E – using a professional representative (the 'PR') – wrote to the Lender on 11 November 2021 (the 'Letter of Complaint') to raise a number of different concerns. Since then the PR has raised some further matters it says are relevant to the outcome of the complaint. As both sides are familiar with the concerns raised, it isn't necessary to repeat them in detail here beyond the summary above.

Mr E then referred the complaint to the Financial Ombudsman Service having not received a final response letter from the Lender.

On reviewing the merits of the complaint, one of our Investigators upheld it and set out what the Lender should do to put things right for Mr E. Essentially, this meant putting him in the position he'd have been in had he not purchased the membership or borrowed the money to do so through the Lender:

- Asking the Supplier to reinstate any previous membership Mr E had prior to the purchase in question (if relevant) if Mr E so wished.
- Returning to Mr E the repayments under the Credit Agreement along with the annual membership charges he paid the Supplier as a result of the Fractional Club membership, with the Lender deducting:
 - The cost of any promotional giveaways given to him at the Time of Sale;
 - The market value* of the holidays he took using Fractional Club membership – if any; and/or
 - The difference between the annual management charges he paid as a result of Fractional Club membership and the same charge that would have been payable as a result of any previous membership for years in which he didn't use his Fractional Club membership to holiday.

(the 'Net Repayments')

* If it wasn't possible to determine the market value of such holidays, the Lender could use annual management charges payable under the Fractional Club membership as a guide as to what a reasonable deduction for usage might look like.

- Cancel the outstanding balance of the loan in question if Mr E still owed the Lender money under the Credit Agreement.
- Pay 8% simple interest per annum on each of the Net repayments from the date each payment was made to the date the complaint was settled.
- Remove any adverse information recorded on Mr E's credit file in connection with the loan.
- If relevant, if relinquishment of the Fractional Club membership isn't possible, as long as Mr E agreed to hold the benefit of his interest in the Allocated Property for the Lender (or assign it to the Lender if achievable), the Lender should indemnify him against all ongoing liabilities as a result of his Fractional Club membership.

The Lender accepted the Investigator's findings.

Mr E did not accept the Investigator's findings insofar as what the Lender needed to do to compensate him. He said, in summary, that the actual cost of the Fractional Club membership was £42,299, of which £37,674 was paid for by Mr E trading in his existing timeshare. The Lender's offer of compensation should take account of the trade in value and not just the amount of finance taken. Mr E also disagreed that the Lender could deduct the difference in annual management charges for years in which he didn't use his Fractional Club membership to holiday. He also confirmed he did not want his previous membership reinstated.

As the parties were unable to agree on a way forward, the complaint was passed to me to review afresh.

I considered the complaint and set out my findings in a provisional decision (PD). I gave both parties the opportunity to respond with any further information they wished me to take into account before I reviewed the case again. My PD included the following:

'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.

Having done so, I provisionally intend to uphold Mr E's complaint and direct the Lender to put things right for him. But before I address what I consider to be fair compensation, I will deal with Mr E's concerns, which prevented him from accepting the Lender's offer.

It appears the Lender has made an offer that broadly reflects the general redress principles adopted by this service on the basis that Mr E's relationship with it was unfair on him as per Section 140A of the CCA because of the Supplier's breach of Regulation 14(3) of the Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010 ("the Timeshare Regulations"). And given the majority of what the Investigator asked the Lender to do to put things right is accepted by Mr E, I don't plan to make detailed findings on whether Mr E's relationship with the Lender was unfair on him.

Furthermore, while I recognise that there are a number of aspects to Mr E's complaint, it isn't

necessary to make formal findings on all of them because, even if some of those aspects of the complaint ought to succeed, (including for example Mr E's claims under Section 75 CCA), the redress I'm currently proposing puts Mr E in the same or a better position than he would be if the redress was limited to those aspects.

Mr E was an existing Fractional Club member and his membership was traded in against the purchase price of the Fractional Club membership that is the subject of this complaint. Under his previous Fractional Club membership, he had a certain number of Fractional Club points. And, like the Fractional Club membership that is the subject of this complaint, he had to pay annual management charges as a Fractional Club member. So, had Mr E not purchased Fractional Club membership that is the subject of this complaint, he would have always been responsible to pay an annual management charge of some sort. As a result, I think it is fair that this be accounted for in working out how to put things right.

The PR said fair compensation should include the trade in value that was attached to the previous Fractional Club membership because Mr E gave up that membership in part-exchange for the latter Fractional Club membership. While the Supplier gave Mr E £37,674 credit for his previous Fractional Club points, this credit wasn't the equivalent of cash. It was a deduction from the starting price set by the Supplier itself for Mr E's upgrade to the Fractional Club membership sold in 2014.

And as there is no information to indicate what the market value was of the Allocated Property connected to his subsequent purchase of the 2014 Fractional Club membership, there is no evidence that the starting price of that 'upgrade' represented the objective value of the benefits under the new purchase agreement, as opposed to a commercial opening position from which the Supplier would and could profitably offer deductions or discounts.

So, overall, I don't think that the refund Mr E should receive ought to include the trade in value attached to his previous Fractional Club membership.'

At that point in the PD, I set out my thoughts on what the Lender should do to put things right for Mr E.

The PR confirmed it had no additional comments to make.

The Lender confirmed receipt of the PD but didn't provide any addition comments or information.

The complaint was passed back to me to review once more.

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 that, and on the basis that neither of the parties has sought to challenge my provisional findings, I see no need to change them now. So, I simply affirm that earlier decision in this final decision.

Putting things right

Having found that Mr E would not have agreed to purchase Fractional Club membership at the Time of Sale were it not for the breach of Regulation 14(3) of the Timeshare Regulations by the Supplier (as deemed agent for the Lender), and the impact of that breach meaning that, in my view, the relationship between the Lender and Mr E was unfair under Section

140A of the CCA, I think it would be fair and reasonable to put him back in the position he would have been in had he not purchased the Fractional Club membership (i.e., not entered into the Purchase Agreement), and therefore not entered into the Credit Agreement, provided Mr E agrees to assign to the Lender his Fractional Points or hold them on trust for the Lender if that can be achieved.

Mr E was an existing Fractional Club member ('FC Membership 1') and his membership was traded in against the purchase price of Fractional Club membership in question ('FC Membership 2'). Under FC Membership 1, he had 2,898 Fractional Points. And, like FC Membership 2, he had to pay annual management charges as part of FC Membership 1. So, had Mr E not purchased FC Membership 2, he would have always been responsible to pay an annual management charge of some sort. With that being the case, any refund of the annual management charges paid by Mr E from the Time of Sale as part of FC Membership 2 should amount only to the difference between those charges and the annual management charges he would have paid as part of FC Membership 1.

I'm conscious that, under FC Membership 1, Mr E was entitled to a share in an allocated property. It isn't clear if reinstatement of FC Membership 1 can be achieved to the satisfaction of both parties to it.

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

- (1) The Lender should refund Mr E's repayments to it under the Credit Agreement, including any sums paid to settle the debt, and cancel any outstanding balance if there is one.
- (2) In addition to (1), the Lender should also refund the difference between the annual management charges paid after the Time of Sale under FC Membership 2 and what Mr E's annual management charges would have been under FC Membership 1 had he not purchased FC Membership 2.
- (3) The Lender can deduct:
 - i. The value of any promotional giveaways that Mr E used or took advantage of; and
 - ii. The market value of the holidays* Mr E took using FC Membership 2 *if* the Points value of the holiday(s) taken amounted to more than the total number of Fractional Points he would have been entitled to use at the time of the holiday(s) as an ongoing FC Membership 1 member. 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 Mr E took a holiday worth 2,550 Fractional Points after the Time of Sale and he would have been entitled to use a total of 2,500 Fractional Points under FC Membership 1 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 he would have been entitled to use 2,600 Fractional Points under FC Membership 1, 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 Mr E's credit file in connection with the Credit Agreement reported within six years of this decision.
- (6) If Mr E's Fractional Club membership is still in place at the time of this decision, as long as he agrees to hold the benefit of his interest in the Allocated Property for the Lender (or assign it to the Lender if that can be achieved), the Lender must indemnify him against all ongoing liabilities as a result of his Fractional Club 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 Mr E took using his Fractional Points, deducting the relevant annual management charges (that correspond to the year(s) in which one or more holidays were taken) payable under the Purchase Agreement seems to me to be a practical and proportionate alternative in order to reasonably reflect his usage.

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

My final decision

For the reasons set out above, my final decision is to uphold the complaint. I require Mitsubishi HC Capital UK Plc to put things right for Mr E as explained above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E to accept or reject my decision before 31 December 2025.

Nimish Patel
Ombudsman