DRN-5993140

The complaint

Mrs O'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 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.

What happened

Mrs O and Mr O were the members of a timeshare provider (the 'Supplier') – having purchased a number of products from it over time. But the product at the centre of this complaint is their membership of a timeshare that I'll call the 'Fractional Club' – which they bought on 25 August 2016 (the 'Time of Sale'). They entered into an agreement with the Supplier to buy 1,820 fractional points at a cost of £14,232 (the 'Purchase Agreement').

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

Mrs O and Mr O paid for their Fractional Club membership by taking finance of £14,232 from the Lender (the 'Credit Agreement') in Mrs O's sole name making her the sole (and only) complainant in this case.

Mrs O – using a professional representative[1] (the 'PR') – wrote to the Lender on 23 March 2022 (the 'Letter of Complaint') to raise a number of different concerns. As those concerns haven't changed since they were first raised, and as both sides are familiar with them, it isn't necessary to repeat them in detail here beyond the summary above.

The Lender dealt with Mrs O's concerns as a complaint and issued its final response letter on 27 March 2023, rejecting it on every ground.

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

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

The legal and regulatory context

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

[1] Prior to this date another PR was representing Mrs O. This PR wrote to the Lender on 15 January 2018.

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

The 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

I considered the matter and issued a provisional decision (the 'PD') dated 22 September 2025. In that decision, I said:

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

And having done that, I don't currently think this complaint should be upheld.

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

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

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

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 that Fractional Club membership had been misrepresented by the Supplier at the Time of Sale because Mrs O was:

1) told by the Supplier that Fractional Club membership had a guaranteed end date when that wasn't true.
2) told by the Supplier that Fractional Club membership was an "investment" when that wasn't true.

However, telling prospective members that they were investing their money because they were buying a fraction or share of one of the Supplier's properties wasn't untrue. After all, a share in an allocated property was, by its very nature, an investment. And while, as I understand it, the sale of the Allocated Property could be postponed in certain circumstances according to the Fractional Club Rules, Mrs O says little to nothing to persuade me that she was given a guarantee by the Supplier that the Allocated Property would be sold on a specific date when such a promise would have been impossible to stand by given the inevitable uncertainty of selling property some way into the future. And as there's nothing else on file to support the PR's allegation, I'm not persuaded that there was a representation by the Supplier on the issue in question that constituted a false statement of fact.

So, while I recognise that Mrs O and the PR have 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 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 in this respect.

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

I've already summarised how Section 75 of the CCA works and why it gives consumers a right of recourse against a lender. So, it isn't necessary to repeat that here other than to say that, if I find that the Supplier is liable for having breached the Purchase Agreement, the Lender is also liable.

Mrs O says that she couldn't holiday where and when she wanted to – which, on my reading of the complaint, suggests that the Supplier wasn't living up to its end of the bargain, potentially breaching the Purchase Agreement.

Yet, like any holiday accommodation, availability wasn't unlimited – given the higher demand at peak times, like school holidays, for instance. Some of the sales paperwork likely to have been signed by Mrs O states that the availability of holidays was/is subject to demand. I accept that she may not have been able to take certain holidays. But I haven't seen enough to persuade me that the Supplier had breached the terms of the Purchase Agreement.

The PR also says on Mrs O's behalf that the Supplier breached the Purchase Agreement because it went into liquidation. And if certain parts of the Supplier's business were put into administration, I can understand why the PR is alleging that there was a breach of the Purchase Agreement as a result. However, neither Mrs O nor the PR have said, suggested or provided evidence to demonstrate that Mrs O is no longer:

1. a member of the Fractional Club;
2. able to use her Fractional Club membership to holiday in the same way she could initially; and
3. entitled to a share in the net sales proceeds of the Allocated Property when her Fractional Club membership ends.

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

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

I've already explained why I'm not persuaded that Fractional Club membership was actionably misrepresented by the Supplier at the Time of Sale. But there are other aspects of the sales process that, being the subject of dissatisfaction, I must explore with Section 140A in mind if I'm to consider this complaint in full – which is what I've done next.

Having considered the entirety of the credit relationship between Mrs O and the Lender along with all of the circumstances of the complaint, I don't think the credit relationship between them was likely to have been rendered unfair for the purposes of Section 140A. When coming to that conclusion, and in carrying out my analysis, I've looked at:

1. The standard of the Supplier's commercial conduct – which includes its sales and marketing practices at the Time of Sale along with any relevant training material;
2. The provision of information by the Supplier at the Time of Sale, including the contractual documentation and disclaimers made by the Supplier;
3. Evidence provided by both parties on what was likely to have been said and/or done at the Time of Sale;
4. The inherent probabilities of the sale given its circumstances; and, when relevant
5. Any existing unfairness from a related credit agreement.

I've then considered the impact of these on the fairness of the credit relationship between Mrs O and the Lender.

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

Mrs O's complaint about the Lender being party to an unfair credit relationship was and is made for several reasons.

The PR says, for instance that:

1. the right checks weren't carried out before the Lender lent to Mrs O and
2. Mrs O was pressured by the Supplier into purchasing Fractional Club membership at the Time of Sale.

However, as things currently stand, neither of these strike me as reasons why this complaint should succeed.

I haven't seen anything to persuade me that the right checks weren't carried out by the Lender given this complaint's circumstances. But even if I were to find that the Lender failed to do everything it should have when it agreed to lend (and I make no such finding), I would have to be satisfied that the money lent to Mrs O was actually unaffordable, before also concluding that she lost out as a result, and then consider whether the credit relationship with the Lender was unfair to her for this reason. But from the information provided, I'm not satisfied that the lending was unaffordable for Mrs O.

I acknowledge that Mrs O may have felt weary after a sales process that went on for a long time. But she says little about what was said and/or done by the Supplier during the sales presentation that made her feel as if she had no choice but to purchase Fractional Club membership when she simply didn't want to. She was also given a 14-day cooling off period and she hasn't provided a credible explanation for why she didn't cancel her membership during that time. And with all of that being the case, there is insufficient evidence to demonstrate that Mrs O made the decision to purchase Fractional Club membership because her ability to exercise that choice was significantly impaired by pressure from the Supplier.

Overall, therefore, I don't think that Mrs O's credit relationship with the Lender was rendered unfair to her under Section 140A for any of the reasons above. But there is another reason, perhaps the main reason, why the PR now says the credit relationship with the Lender was unfair to her. And that's the suggestion that Fractional Club membership was marketed and sold to her as an investment in breach of prohibition against selling timeshares in that way.

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

A share in the Allocated Property clearly constituted an investment as it offered Mrs O the prospect of a financial return – whether or not, like all investments, that was more than what she first put into it. But it's important to note at this stage that the fact that Fractional Club 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 as an investment. It doesn't prohibit the mere existence of an investment element in a timeshare contract or prohibit the marketing and selling of such a timeshare contract *per se*.

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

To conclude, therefore, that Fractional Club membership was marketed or sold to Mrs O as an investment in breach of Regulation 14(3), I've to be persuaded that it was more likely than not that the Supplier marketed and/or sold membership to her as an investment, i.e. told her or led her to believe that Fractional Club membership offered her the prospect of a financial gain (i.e., a profit) given the facts and circumstances of this complaint.

There is competing evidence in this complaint as to whether Fractional Club membership was marketed and/or sold by the Supplier at the Time of Sale as an investment in breach of regulation 14(3) of the Timeshare Regulations.

On the one hand, it's clear that the Supplier made efforts to avoid specifically describing membership of the Fractional Club as an 'investment' or quantifying to prospective purchasers, such as Mrs O, 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.

On the other hand, I acknowledge that the Supplier's sales process left open the possibility that the sales representative may have positioned Fractional Club membership as an investment. So, I accept that it's equally possible that Fractional Club membership was marketed and sold to Mrs O as an investment in breach of Regulation 14(3).

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

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

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

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

But on my reading of the evidence before me, the prospect of a financial gain from Fractional Club membership wasn't an important and motivating factor when Mrs O decided to go ahead with her purchase. I say that having read and considered a testimony dated 8 January 2020 from Mr O submitted by the PR on Mrs O and Mr O's behalf.

The testimony sets out Mr O's recollections of his and Mrs O's entire relationship with the Supplier between 2007 and 2020. As regards the purchase of the Fractional Club at the Time of Sale Mr O, on behalf of himself and Mrs O, says:

"We were on holiday and the sales team invited us to meet them for breakfast, after this we were brought to a high pressure sales meeting. They made us aware that we were expected to pay maintenance fees for the years that we were not using the scheme, plus maintenance fees on the Fractional points and therefore we would have to pay two lots of maintenance fees. We were told that if we bought a second…suite we would only pay maintenance for this as this would fill in the other year. We were told that this was something we could leave to our children and therefore an investment. There was a time limit (15 years comes to mind) after which we would sell the ownership back at a profit." We felt as though this was our only option as we did not want to continue to be liable for two sets of maintenance fees. However, after making this purchase we have realised that the maintenance fees have continued to increase. We were told that this would incur at a rate of inflation, however this has increased well over double inflation."

I accept that Mr O, in the above, says that the Supplier told him and Mrs O that the purchase would be an investment. But I can't see that this is any more than a description of how the Fractional Club worked – it certainly doesn't suggest that a potential profit was a motivating factor for Mrs O.

And having considered everything Mr O said in the above it seems to me that Mrs O entered into the membership because of what she understood was her current maintenance fee liability and what her maintenance fee liability would be going forward. That doesn't mean she wasn't interested in a share in the Allocated Property. After all, that wouldn't be surprising given the nature of the product at the centre of this complaint. But as I've said, I don't think this was a motivation for her.

Furthermore I think that a further motivating factor for Mrs O to enter into the membership was the type and quality of holiday she understood that membership would allow her to take going forward given that in Mr O's testimony he goes on to say:

"We have now realised that we could travel on 2 or 3 weeks holidays for a year for the cost of these maintenance fees. Furthermore, the availability of the scheme is an issue as whenever we have tried to book a holiday in [resort] or accommodation in [city], we have been told that nothing was available. We were told that the scheme would be fully flexible for worldwide destinations, however we must book two years in advance for [certain] destinations. Additionally, we had originally been told that [the Supplier's] resorts were exclusive to members only, however we have found that non-members are able to access the resorts and have been advertising online for this. This is very frustrating as non-members pay less for their holidays than we do for our maintenance fees.."

So as Mrs O 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 she ultimately made.

On balance, therefore, even if the Supplier had marketed or sold the Fractional Club membership as an investment in breach of Regulation 14(3) of the Timeshare Regulations, I'm not persuaded that Mrs O's decision to purchase Fractional Club membership at the Time of Sale was motivated by the prospect of a financial gain (i.e., a profit). On the contrary, I think the evidence suggests 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 don't think the credit relationship between Mrs O and the Lender was unfair to her even if the Supplier had breached Regulation 14(3).

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

The PR says that Mrs O wasn't given sufficient information at the Time of Sale by the Supplier in order to make an informed choice.

It isn't clear what information the PR thinks the Supplier failed to provide at the Time of Sale. But as I've already indicated, the case law on Section 140A makes it clear that it doesn't automatically follow that regulatory breaches create unfairness for the purposes of the unfair relationship provisions. The extent to which such mistakes render a credit relationship unfair must also be determined according to their impact on the complainant.

So, while I acknowledge that it's also possible that the Supplier didn't give Mrs O sufficient information, in good time, in order to satisfy the requirements of Regulation 12 of the Timeshare Regulations (which was concerned with the provision of 'key information'), even if that was the case, neither Mrs O nor the PR have persuaded me that she was deprived of information that would have led her to make a different purchasing decision at the Time of Sale. And with that being the case, even if there were information failings (which I make no formal finding on), I can't see why they led to a financial loss.

In conclusion, as things currently stand, I don't think that the Lender acted unfairly or unreasonably when it dealt with the relevant Section 75 claim(s), and if I put the issue of commission to one side for the time being, I'm not persuaded that the Lender was party to a credit relationship with Mrs O under the Credit Agreement that was unfair to her 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 her.

Following my provisional decision, I also communicated how I wasn't persuaded that Mrs O's credit relationship with the Lender wasn't unfair to her for reasons relating to the commission arrangements between it and the Supplier.

The Lender responded to the PD and accepted it.

The PR responded to the PD and said it had nothing further to add.

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

What I've decided – and why

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

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

So in conclusion, given the facts and circumstances of this complaint, I don't think that the Lender acted unfairly or unreasonably when it dealt with Mrs O's Section 75 claims, and I'm 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 see no other reason why it would be fair or reasonable to direct the Lender to compensate her.

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 Mrs O to accept or reject my decision before 9 January 2026.

Peter Cook
Ombudsman