DRN-5997663

## The complaint

Mr S'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 them under section 140A of the Consumer Credit Act 1974 (as amended) (the 'CCA'), (2) deciding against paying a claim under section 75 of the CCA, and (3) lending to him irresponsibly by failing to carry out proper creditworthiness checks.

## Background to the complaint

Mr S (and a third party) purchased membership of a timeshare (the 'Fractional Club') from a timeshare provider (the 'Supplier') on 11 July 2013 (the 'Time of Sale'). They entered into an agreement with the Supplier to buy 747 fractional points at a cost of £10,999 (the 'Purchase Agreement').

Fractional Club membership was asset backed – which meant it gave Mr S 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 his membership term ends.

Mr S paid for the Fractional Club membership by taking finance of £10,999 from the Lender (the 'Credit Agreement'). This loan was refinanced with another lender in December 2013.

Mr S – using a professional representative (the 'PR') – wrote to the Lender on 20 August 2015 and 5 November 2015 to raise a number of concerns (the 'original complaint'). He raised a claim for misrepresentation and breach of contract under section 75 of the CCA; complained that the Credit Agreement had been mis-sold to him because proper checks had not been carried out; and also complained that the Fractional Club had been misrepresented to him as an investment at the Time of Sale. The Lender rejected the original complaint on every ground. The PR then brought that complaint to the Financial Ombudsman Service. That complaint was not upheld, and is now closed.

On 20 July 2016 the PR wrote to the Lender again (the 'Letter of Complaint'). It repeated its concerns about irresponsible lending. But it also alleged that the relationship between Mr S and the Lender had been unfair under section 140A of the CCA, for reasons that had not been argued before. The Lender declined to consider this complaint, on the ground that it was a duplicate of the original complaint.

The new complaint was then referred to the Financial Ombudsman Service. It was assessed by an Investigator who, having considered the information on file, decided that the complaint was not a duplicate because it raised new issues. But he rejected this complaint on its merits.

Mr S disagreed with the Investigator's assessment and asked for an ombudsman's decision – and that second complaint is the case I am dealing with here.

I wrote a provisional decision which read as follows.

## 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.

## 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 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.

I am not going to consider issues which were previously dealt with under the original complaint, such as irresponsible lending and selling the timeshare as an investment. Our rules allow me to do this.

In support of this complaint, the PR referred me to the Finance and Leasing Association's 2006 *Lending Code*. But it was the 2012 *Lending Code* which was in force at the Time of Sale, so I have had regard to that.

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

The PR says that:

1. Mr S was pressured by the Supplier into purchasing Fractional Club membership at the Time of Sale; and
2. The Supplier breached EU law.[1]

However, having considered the entirety of the credit relationship between Mr S 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 have 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.

[1] This sentence has been edited for clarity.

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

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

The 2012 *Lending Code* says (on page 74):

> *"We will … not pressurise you to enter into any agreement with us and try to make sure that credit brokers, and all other suppliers of goods and services we do business with, do not pressurise you".*

I acknowledge that Mr S may have felt weary after a sales process that went on for a long time. But he was also given a 14-day cooling off period and he has not provided a credible explanation for why he did not cancel his membership during that time. That right was explained to him in the sales documentation. And with all of that being the case, there is insufficient evidence to demonstrate that Mr S made the decision to purchase Fractional Club membership because his ability to exercise that choice was significantly impaired by pressure from the Supplier.

The PR did not explain in the Letter of Complaint which EU laws it says were breached. So I can't fault the Lender for not having upheld that aspect of Mr S's complaint. It didn't have enough to go on.

Overall, therefore, I don't think that Mr S's credit relationship with the Lender was rendered unfair to him under section 140A for any of the reasons above.

## Conclusion

In conclusion, as things currently stand, I am not persuaded that the Lender was party to a credit relationship with Mr S under the Credit Agreement that was unfair to him for the purposes of section 140A of the CCA – nor do I see no other reason why it would be fair or reasonable to direct the Lender to compensate him.

So my provisional decision is that I do not intend to uphold this complaint.

## Responses to my provisional decision

The PR did not accept my provisional findings. It made the following points:

- It objected to my refusal to reconsider the complaint points that had been raised in the previous complaint – especially the allegation that the timeshare had been mis-sold as an investment.

- I had based my decision on a template which had been used for other decisions. As an example to demonstrate this, the PR quoted a passage about a judgement of the High Court, which it said I had quoted in my provisional decision.

- I had failed to consider the Supreme Court's judgement about undisclosed commission payments in *Johnson v FirstRand Bank Ltd, Wrench v FirstRand Bank Ltd and Hopcraft v Close Brothers Ltd* [2025] UKSC 33 ("*Johnson*").

- The cooling-off period does not cure the pressurised mis-selling of the timeshare, and is meaningless when the decision to purchase is not made freely. The

psychological impact of the pressure does not end when the consumer leaves the Supplier's premises.

The Lender did not respond.

**My findings**

I am not persuaded by any of the PR's arguments, and I remain of the view that this complaint should not be upheld. I will explain why.

I will deal with the Lender's points in the same order as above.

- Our service is not obliged to consider for a second time a complaint which has already been considered on its merits before. Rules made by the Financial Conduct Authority in its *Handbook* (in the chapter titled *Dispute Resolution: Complaints*) allow us to dismiss such a complaint without considering its merits.[2] I see no reason not to do that on this occasion.

- I didn't say anything about a High Court judgement in my provisional decision. (The fact that the PR says I did suggests that their own response to my provisional decision was itself based on a template that they have used in other cases.) So their argument that I used a template is not to the point. Furthermore, I think that there is nothing wrong in principle with using the same wording across similar cases so long as it remains accurate and relevant to the facts of the individual case in question.

- The reason I didn't mention the *Johnson* judgement is because the PR had not previously raised commission as part of this complaint. However, I will briefly address it below, taking the Supreme Court judgement into account.

- I disagree with the PR's analysis of the cooling-off period. Any pressure experienced by a consumer during a sales presentation cannot possibly continue to last over the next 14 days. I think that the whole point of having a cooling-off period is to give consumers the opportunity to reflect and reconsider in their own time (as well as to read terms and conditions at their leisure). It isn't plausible to me that Mr S was unable to do that.

*Commission*

As the PR will be aware, under DISP 3.5.9 R I may, where I consider it appropriate, accept information in confidence (so that only an edited version, summary or description is disclosed to the other party). I'm satisfied that agreements between the Lender and the Supplier are commercially sensitive and that the summary information on commission arrangements we've already shared with the PR is appropriate in this case. And while I appreciate that the PR would like to have full disclosure of all of the documents and information the Lender has provided, our rules do not require me to provide this when dealing with a complaint.

I'm satisfied that the Lender has provided sufficient information in response to my enquiries to enable me to reach a conclusion about its commission arrangements with the Supplier. I've seen nothing in this case that leads me to think what the Lender has said about the commission arrangements is inaccurate. So there's no reason for me to reach a different finding over those commission arrangements.

[2] See the *FCA Handbook,* DISP 3.3.4A R (5) and DISP 3.3.4B G (3).

Applying the principles and factors set out in *Johnson,* I find nothing to suggest that the Lender and Supplier were tied to one another contractually or commercially in a way that wasn't properly disclosed to Mr S. Nor do I see anything that persuades me that the commission arrangements between them gave the Supplier a choice over the interest rate which led Mr S into a credit agreement that cost disproportionately more than it otherwise could have.

Further, the flat rate and amount of commission paid were such that they give me no reason to think that any failure to disclose them to Mr S had a material impact on his decision to enter into the Credit Agreement. At £1,072:40, it was only 9.75% of the amount borrowed and even less than that (8.71%) as a proportion of the total charge for credit. That doesn't strike me as disproportionate; nor were the surrounding circumstances pertaining to commission otherwise capable of rendering unfair the credit relationship between the Lender and Mr S such that the Lender needed to take any action in redress.

**My final decision**

My decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 16 January 2026.

Richard Wood
**Ombudsman**