

The complaint

Mrs A'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 A and another party purchased membership of a timeshare (the 'Fractional Club') from a timeshare provider (the 'Supplier') on 21 December 2016 (the 'Time of Sale'). They entered into an agreement with the Supplier to buy 810 fractional points at a cost of £14,810.

Fractional Club membership was asset backed – which meant it gave Mrs A and the other party 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 A and the other party paid for their Fractional Club membership by taking finance of £14,810 from the Lender (the 'Credit Agreement') in Mrs A's sole name making her the sole and only complainant in this case.

Mrs A – using a professional representative (the 'PR') – wrote to the Lender on 9 May 2024 (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 A's concerns as a complaint and issued its final response letter on 18 June 2022, 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.

The PR on behalf of Mrs A disagreed with the Investigator's assessment and asked for an Ombudsman's decision – which is why it was passed to me. In its response to the Investigator's assessment the PR reiterated that Fractional Club was marketed and sold to Mrs A as an investment in breach of Regulation 14(3).

I considered the matter and issued a provisional decision (the 'PD') on 21 August 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've not commented on, or referred to, something that either party has said, that doesn't mean I've not 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 in the Letter of Complaint that Fractional Club membership had been misrepresented by the Supplier at the Time of Sale because Mrs A 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 A 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 A 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.

But even if I wasn't of the above view, I think it's reasonable for creditors to reject Section 75 claims that they are first informed about after the claim has become time-barred under the Limitation Act 1980 ("LA"), as it wouldn't be fair to expect creditors to look into such claims so long after the liability arose and after a limitation defence would have been available in court. So, it's relevant to consider whether Mrs A's Section 75 claim was time-barred under the LA before the PR put the claim to the Lender on her behalf.

As I mentioned above, a claim under Section 75 is a "like claim". This means it mirrors the claim Mrs A could have made against the Supplier.

A claim for misrepresentation against the Supplier would ordinarily be made under Section 2(1) of the Misrepresentation Act 1967. And the limitation period to make such a claim expires six years from the date on which the cause of action accrued. A claim for breach of contract against the Supplier would also be subject to a limitation period of six years from the date on which the cause of action accrued.

Any claim against a lender under Section 75 is also "an action to recover any sum by virtue of any enactment" under Section 9 of the LA. Such claims also have a time limit of six years from the date the cause of action accrued.

In claims for misrepresentation, the cause of action accrues at the point a loss is incurred. In Mrs A's case, that's when she entered the agreement to purchase the timeshare, and the related Credit Agreement, on 21 December 2016. This would be mirrored in the claim against the Lender.

Mrs A first notified the Lender of her Section 75 claim in May 2024, more than six years after the cause of action accrued in relation to her claims for misrepresentation. So I don't think it would have been unfair or unreasonable of the Lender to decline the part of the claim relating to the Supplier's alleged misrepresentations.

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 A 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 A 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've not seen enough to persuade me that the Supplier had breached the terms of the Purchase Agreement.

The PR also says on Mrs A'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 A nor the PR have said, suggested or provided evidence to demonstrate that she 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 A any compensation for a breach of contract by the Supplier. And with that being the case, I don't think it would have been unfair or unreasonable of the Lender to decline the part of the claim relating to the Supplier's alleged breach of contract.

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 A 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 A and the Lender.

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

Mrs A'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 A; and
2. Mrs A was pressured by the Supplier into purchasing Fractional Club membership at the Time of Sale.

However, as things currently stand, none 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 A 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 A.

I acknowledge that Mrs A 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 A 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 A'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

The Lender doesn't dispute, and I'm satisfied, that Mrs A's Fractional Club membership met the definition of a "timeshare contract" and was a "regulated contract" for the purposes of the Timeshare Regulations.

Regulation 14(3) of the Timeshare Regulations prohibited the Supplier from marketing or selling Fractional Club 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 Time of Sale.

The term "investment" isn't 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 Mrs A 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 didn't, 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 A 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 A, 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 A 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 A 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 A 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 A decided to go ahead with her purchase.

The Letter of Complaint submitted by the PR and a statement from Mrs A raise a variety of concerns about the mis-selling of the Fractional Club membership. They both mention that Mrs A was told, or led to believe, by the Supplier that the membership was an investment and would likely increase in value.

However, neither the PR's Letter of Complaint nor Mrs A's statement states a clear reason as to why Mrs A chose to purchase Fractional Club membership. The statement says that Mrs A recalls being told that the Allocated Property "*would be sold at a later date when the term expired and [she] would get [her] initial investment back as well as an extra percentage on top of the profits*". However, if it had been sold in such a way that Mrs A reasonably held out hope of making a profit, I might have expected her to recall specific comments made by the Supplier about the level of profit she might have expected to make, for example.

In my view, however, Mrs A's statement more or less mirrors the assertion made by the PR in the Letter of Complaint. And those assertions were generic – they simply stated that the Fractional Club was sold as an investment. Significantly, they didn't say that it was what motivated Mrs A's purchase. Additionally, the assertions were made in an identical fashion to a number of other complaints brought by the PR. I therefore have reason to doubt those assertions were specific to Mrs A's circumstances, and in any case, they aren't specific about Mrs A's motivations.

Overall, the evidence and testimony supplied by Mrs A as well as the PR doesn't persuade me that her purchase of Fractional Club membership was motivated by the promise of financial gain or profit as a result of representations made by the Supplier. In my view what motivated Mrs A's purchase were the holidays Fractional Club membership could give her and in this respect it's my understanding, based on records provided by the Lender, that she booked 13 holidays between 2017 and 2020, 10 of which she took.

That doesn't mean that Mrs A 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 Mrs A 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 Mrs A 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 A'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 A 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 A 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 A 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 A 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.

Other Matters

Mrs A submits that instead of paying her £200 for referring two friends and family the Supplier used this sum to reduce her management fee liability. But based on what the parties have said and submitted on this particular point I'm satisfied the Supplier's decision in this respect was done with Mrs A's authority and knowledge. I therefore don't uphold this aspect of Mrs A's complaint.

In conclusion, given the facts and circumstances of this complaint, I didn't think that the Lender acted unfairly or unreasonably when it dealt with Mrs A's Section 75 claims, and I wasn't 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.

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

The Lender didn't respond to the PD.

The PR responded to the PD and didn't accept it.

The PR responded to my further communication (detailing how I wasn't persuaded that Mrs A's credit relationship with the Lender was unfair to her for reasons relating to the commission arrangements between it and the Supplier) to say that it wasn't challenging it.

Having received the relevant responses from both parties, I'm now finalising my decision.

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.

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

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.

Following the responses from both parties, I've considered the case afresh and 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's 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 the PD relate to the issue of whether the credit relationship between Mrs A and the Lender was unfair. In particular, the PR has provided further comments in relation to whether the membership was sold to Mrs A as an investment at the Time of Sale.

As outlined in my PD, 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 PD. 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 PD. 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 Supplier's alleged breach of Regulation 14(3) of the Timeshare regulation

Included in the PR's response to my PD was an oral hearing request. Oral hearings are something that I can direct happen under DISP 3.5.5. However, the Financial Ombudsman Service is set up to decide complaints informally and it's for me as the decision maker to determine what evidence I think I need to determine what's a fair and reasonable outcome to a complaint. Having considered everything, I don't think I need to hold an oral hearing to fairly determine this complaint.

This is because both parties have already provided lengthy submissions. In this case, I have a statement from Mrs A, other evidence, including the documents from the sale, and full submissions from PR and Lender to decide what I think was most likely to have happened.

I'm satisfied I'm able to weigh up what Mrs A has said against the available evidence and arguments to determine what I think happened on the balance of probabilities without the need for an oral hearing. And as it's in everyone's interest to resolve this complaint as soon as possible, to grant a hearing at such a late stage would inevitably prolong the resolution of this case.

As I explained in my PD, although I found there was a possibility that the Supplier breached Regulation 14(3) at the Time of Sale, I wasn't persuaded that the evidence suggested that Mrs A purchased Fractional Club membership in whole or in part down to any breach of Regulation 14(3). And having considered Mrs A's statement again, I remain of the same view.

And as I already said in my PD, it seems from what Mrs A has had to say she was persuaded to purchase due to the holidays Fractional Club membership could give her, a view supported by records provided by the Supplier that show that she booked 13 holidays between 2017 and 2020, 10 of which she took.

Here, the PR has stated that I've been inconsistent with my approach compared to previous decisions issued by the service, and has provided examples it feels demonstrates this. But my decision is based on consideration of Mrs A's specific circumstances. Each complaint turns on its own facts; an ombudsman's decision on how one timeshare sale occurred doesn't determine his, or any other ombudsman's, decisions about the facts of other sales at different times to different purchases.

The PR has also reiterated that the judgment handed down in *Shawbrook & BPF v FOS* asserted that the relevant question in this circumstance is whether the breach of regulation 14(3) was a material factor in the decision to purchase, not whether it was the only factor or principal one. It feels that the testimony Mrs A has provided demonstrates that this was the case. But, as I explained in my provisional decision, I'm not persuaded from the testimony that Mrs A has adequately demonstrated that the promise of profit was a motivating factor to her decision to move ahead with the purchase – principal or otherwise.

So, ultimately, for the above reasons, along with those I already explained in my PD, I remain unpersuaded that any breach of Regulation 14(3) was material to Mrs A's purchasing decision.

So, as I said before, even if the Supplier had marketed or sold the membership as an investment in breach of Regulation 14(3) (which I still make no finding on here), I'm not persuaded Mrs A's decision to make the purchase was motivated by the prospect of a financial gain. So, I still don't think the credit relationship between Mrs A and the Lender was unfair to her for this reason.

Conclusion

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 A'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 A to accept or reject my decision before 9 January 2026.

Peter Cook
Ombudsman