DRN-6003514

The complaint

The estate of Mr A's complaint is, in essence, that Mitsubishi HC Capital Plc (the 'Lender') acted unfairly and unreasonably by (1) being party to an unfair credit relationship with Mr A under Section140A 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 and Mrs A 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 3 September 2013 (the 'Time of Sale'). They entered into an agreement with the Supplier to buy 2,740 fractional points at a cost of £9,500 (the 'Purchase Agreement').

Fractional Club membership was asset backed – which meant it gave Mr and Mrs A 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.

Mr and Mrs A paid for their Fractional Club membership by taking finance of £9,500 from the Lender (the 'Credit Agreement') in Mr A's name making his estate the sole and only complainant in this case.

Mr A – using a professional representative (the 'PR') – wrote to the Lender on 1 September 2019 (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.

In April 2020 the complaint was referred to the Financial Ombudsman Service.

The Lender dealt with Mr A's concerns as a complaint and issued its final response letter on 15 May 2020, rejecting it on every ground.

Mr A's complaint was assessed by an Investigator who, having considered the information on file, rejected the complaint on its merits.

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

I considered the matter and issued a provisional decision (the 'PD') on 30 October 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'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.

While I recognise that Mr 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. But I'm not persuaded that there was. And that means that I don't think that the Lender acted unreasonably or unfairly in this aspect of the complaint.

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.

But from the evidence I've seen, I don't think the Lender is liable to pay Mr A 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 relation to this aspect of the complaint either.

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 Mr 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 Mr A and the Lender.

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

Mr 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 Mr A; and
2. Mr A 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 Mr A was actually unaffordable, before also concluding that he lost out as a result, and then consider whether the credit relationship with the Lender was unfair to him for this reason. But from the information provided, I'm not satisfied that the lending was unaffordable for Mr A.

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

Overall, therefore, I don't think that Mr A's credit relationship with the Lender was rendered unfair to him 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 Mr A. And that's the suggestion that Fractional Club membership was marketed and sold to him 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 Mr A the prospect of a financial return – whether or not, like all investments, that was more than what he 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 Mr 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 him as an investment, i.e. told him or led him to believe that Fractional Club membership offered him 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 Mr 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 Mr 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 Mr 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 Mr A and the Lender that was unfair to him and warranted relief as a result, whether the Supplier's breach of Regulation 14(3) led him 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 Mr A decided to go ahead with his purchase.

I accept that in a client statement dated 24 July 2019, compiled by the PR and provided to our service in November 2023, Mr A says:

"In 2013 we were on holiday and were invited to a meeting with the representatives. This was an extremely long sales presentation which lasted the whole day where we were introduced to the Fractional Owners Club.

This was sold to us as an investment in property where we would have a return on our money and gain a profit when the property was sold. Once sold, we would have an exit from the timeshare contract and receive a profit.

The representatives advised that they could offer us a good price on fractional points however we would need to decide that day and purchase that day. We were not afforded any time to think about this. It was a "buy now" deal."

But in my view the above doesn't state that the prospect of a financial gain from Fractional Club membership was an important and motivating factor when Mr A decided to go ahead with his purchase.

Furthermore I'm not persuaded I can attach much weight to this statement, if any, given that:

- This statement was provided to our Service more than ten years after the events in
- question.
- This statement was provided after the ruling in Shawbrook & BPF v FOS and after the Investigator rejected Mr A's complaint on its merits.
- Notwithstanding, on the face of it at least, the PR was in possession of this statement before it sent the Lender its Letter of Complaint, it didn't say under cover of this letter that Mr A was motivated to make the purchase that he did on the grounds that the prospect of a financial gain from Fractional Club membership was an important and motivating factor for him when I might have expected it to do so.
- Notwithstanding, on the face of it at least, the PR was in possession of this statement before it referred Mr A's complaint to our Service, it didn't say under cover of this referral (including in our Service's complaint form) that Mr A was motivated to make the purchase that he did on the grounds that the prospect of a financial gain from Fractional Club membership was an important and motivating factor for him when I might have expected it to do so.

This doesn't mean that Mr 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 his complaint. But as I've said, I don't think this was a motivation for him.

So as Mr A doesn't persuade me that his purchase was motivated by his 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 he 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 Mr 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 he would have pressed ahead with his 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 Mr A and the Lender was unfair to him 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 Mr 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 Mr 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 Mr A nor the PR have persuaded me that Mr A was deprived of information that would have led him 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, given the facts and circumstances of this complaint, I didn't think that the Lender acted unfairly or unreasonably when it dealt with Mr A's Section 75 claims, and I wasn't persuaded that the Lender was party to a credit relationship with him under the Credit Agreement that was unfair to him 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 him.

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

The Lender didn't respond to the PD or my further communication (detailing how I wasn't persuaded that Mr A's credit relationship with it was unfair to him for reasons relating to the commission arrangements between it and the Supplier).

The PR responded to the PD to say that it didn't accept it, providing further evidence and comments in support, and responded to my further communication (detailing how I wasn't persuaded that Mr A's credit relationship with the lender was unfair to him for reasons relating to the commission arrangements between it and the Supplier) to say it didn't intend to challenge it.

Having received responses, 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 Office of Fair Trading's Irresponsible Lending Guidance – 31 March 2010

The primary purpose of this guidance was to provide greater clarity for businesses and consumer representatives as to the business practices that the Office of Fair Trading (the 'OFT') thought might have constituted irresponsible lending for the purposes of Section 25(2B) of the CCA. Below are the most relevant paragraphs as they were at the relevant time:

- Paragraph 2.2
- Paragraph 2.3
- Paragraph 5.5

The OFT's Guidance for Credit Brokers and Intermediaries - 24 November 2011

The primary purpose of this guidance was to provide clarity for credit brokers and credit intermediaries as to the standards expected of them by the OFT when they dealt with actual or prospective borrowers. Below are the most relevant paragraphs as they were at the relevant time:

- Paragraph 2.2
- Paragraph 3.7
- Paragraph 4.8

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 responses from the PR, 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 Mr A and the Lender was unfair.

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 Regulations

Included in the PR's response to my PD was an oral hearing request along with the offer for the estate of Mr A to provide a sworn affidavit. 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, notwithstanding that both Mr and Mrs A have sadly passed away, both Mr A and the Lender have already provided lengthy submissions. In this case, I've a statement from Mr A, other evidence, including the documents from the sale, and full submissions from the PR and the Lender to decide what I think was most likely to have happened.

I'm satisfied I'm able to weigh up what Mr A 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.

I understand that the PR also offers to have the estate of Mr A provide a sworn affidavit. But notwithstanding the weight I could attach to such an affidavit, compared with say one from Mr A and/or Mrs A, I must remind the PR that we don't have strict evidential requirements. We aren't expected to decide complaints only after receiving sworn evidence. And our jurisdiction is investigative rather than adversarial. I remain of the view that the information we have on file is enough to cover all the issues I need to consider to reach a fair decision. And as I've considered everything on file, including the specific points raised by the PR as part of its request, I'm of the view that a hearing request and/or a sworn affidavit aren't required.

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 Mr A purchased Fractional Club membership in whole or in part down to any breach of Regulation 14(3). And having considered everything afresh I can confirm that I remain of the same view and for the same reasons.

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 Mr 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 Mr 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 Mr A has adequately demonstrated that the promise of profit was a motivating factor to his 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 Mr 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 Mr 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 Mr A and the Lender was unfair to him for this reason.

Other points

I accept that Mr A has been unable to review or challenge my provisional decision due to his sad passing, but the PR has done so and I assume it has done so in the full knowledge of, and with input from, the estate of Mr A.

I didn't rely on the time passing between Mr A referring his complaint to our service and my issuing of a provisional decision as a reason for not upholding this complaint. Nor did I attach less weight to Mr A's statement than I would have done had I issued my provisional decision earlier than 30 October 2025.

What I said was that Mr A's statement didn't state that the prospect of a financial gain from Fractional Cub membership was a motivating factor in his purchasing decision, which it didn't. And that notwithstanding when Mr A's statement was provided to our service, had the prospect of a financial gain from Fractional Club membership been a motivating factor in his purchasing decision I might have expected the PR to have said so when it sent the Lender its Letter of Complaint and when it referred Mr A's complaint to our service, but it didn't do so.

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 Mr A's Section 75 claims, and I'm not persuaded that the Lender was party to a credit relationship with him under the Credit Agreement that was unfair to him 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 him.

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 the estate of Mr A to accept or reject my decision before 27 February 2026.

Peter Cook
Ombudsman