

The complaint

X's complaint is, in essence, that Mitsubishi HC Capital UK Plc trading as Novuna (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

X and another purchased membership of a timeshare (the 'Fractional Club') from a timeshare provider (the 'Supplier') on 15 February 2018 (the 'Time of Sale'). They entered into an agreement with the Supplier to buy 1,300 fractional points at a cost of £17,433 (the 'Purchase Agreement').

Fractional Club membership was asset backed – which meant it gave X 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 her membership term ends.

X paid for her Fractional Club membership by taking finance of £17,433 from the Lender (the 'Credit Agreement').

X – using a professional representative (the 'PR') – wrote to the Lender on 23 June 2019 (the 'Letter of Complaint') to raise a number of different concerns. Since then the PR has raised some further matters it says are relevant to the outcome of the complaint. As both sides are familiar with the concerns raised, it isn't necessary to repeat them in detail here beyond the summary above.

The Lender dealt with X's concerns as a complaint and issued its final response letter on 10 March 2020, rejecting it on every ground.

I issued a provisional decision explaining why I didn't plan to uphold X's complaint. Relevant parts of my decision included the following:

"I have considered all the available evidence and arguments to decide what is 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.

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 has been said by the PR that Fractional Club membership was misrepresented by the Supplier at the Time of Sale because X was:

- (1) told by the Supplier that Fractional Club membership had a guaranteed end date when that was not true.*
- (2) Told by the Supplier that she owned a 'fraction' of the Allocated Property when that was not true as it was owned by a trustee.*
- (3) told by the Supplier that Fractional Club membership was an "investment" when that was not true.*

Neither the PR nor X have set out in any detail what words and/or phrases were allegedly used by the Supplier to misrepresent Fractional Club for the reason given in points 1 or 2. However, the PR says that such representations were untrue because the Allocated Property was legally owned by a trustee and there was no indication of what duty of care it had to actively market and sell the property. Further, there is no guarantee that any sale will result at all, leaving prospective members to pay their annual management charge for an indefinite and unspecified period.

However, I cannot see why the phrases in points 1 or 2 above would have been untrue at the Time of Sale even if it was said. It seems to me to reflect the main thrust of the contract X entered into. And while, under the relevant Fractional Club Rules, the sale of the Allocated Property could be postponed for up to two years by the 'Vendor'¹, longer than that if there were problems selling and the 'Owners'² agreed, or for an otherwise specified period provided there was unanimous agreement in writing from the Owners, that does not render the representation above untrue. So, I am not persuaded that the representation above constituted a false statement of fact even if it was made.

As for point 3, it does not strike me as a misrepresentation even if such a representation had been made by the Supplier (which I make no formal finding on). Telling prospective members that they were investing their money because they were buying a fraction or share of one of the Supplier's properties was not untrue – nor was it untrue to tell prospective members that they would receive some money when the allocated property is sold. After all, a share in an allocated property was clearly the purchase of a share of the net sale proceeds of a specific property in a specific resort. And while the PR might question the exact legal mechanism used to give prospective members that interest, it did not change the fact that they acquired such an interest.

The PR has raised other matters as potential misrepresentations, but it seems to me that they are not allegations of the Supplier saying something that was untrue. Rather, it is that X wasn't told things about the way the membership worked, for example, that the obligation to pay management fees could be passed on to her children. It seems to me that these are allegations that X wasn't given all the information she needed at the Time of Sale, and I will deal with this further below.

¹ Defined in the FPOC Rules as "CLC Resort Developments Limited".

² Defined in the FPOC Rules as "a purchaser who has entered into a Purchase Agreement and has been issued with a Fractional Rights Certificate (which shall include the Vendor for such period of time until the maximum number of Fractional Rights have been acquired)."

So, while I recognise that X - 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 when it dealt with this particular Section 75 claim.

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

I have already summarised how Section 75 of the CCA works and why it gives consumers a right of recourse against a lender. So, it is not 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.

X said that she could not holiday where and when she wanted to. That was framed, in the Letter of Complaint, as an alleged misrepresentation. However, on my reading of the complaint, this suggests that the Supplier was not living up to its end of the bargain, potentially breaching the Purchase Agreement.

Yet, like any holiday accommodation, availability was not unlimited – given the higher demand at peak times, like school holidays, for instance. Some of the sales paperwork likely to have been signed by X states that the availability of holidays was/is subject to demand. It also looks like she made use of her fractional points to holiday on a number of occasions. I accept that they may not have been able to take certain holidays. But I have not seen enough to persuade me that the Supplier had breached the terms of the Purchase Agreement.

So, from the evidence I have seen, I do not think the Lender is liable to pay X any compensation for a breach of contract by the Supplier. And with that being the case, I do not 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 X 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; and
4. The inherent probabilities of the sale given its circumstances.
5. Any existing unfairness from a related credit agreement.

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

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

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

They include, allegations that:

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

However, as things currently stand, none of these strike me as reasons why this complaint should succeed.

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

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 X 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 them for this reason. But from the information provided, I am not satisfied that the lending was unaffordable for X.

Overall, therefore, I don't think that X'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 does not dispute, and I am satisfied, that X'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 and X say that the Supplier did exactly that at the Time of Sale.

The term “investment” is not 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 X the prospect of a financial return – whether or not, like all investments, that was more than what she first put into it. But it is 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.³

In other words, the Timeshare Regulations did not 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 X as an investment in breach of Regulation 14(3), I have to be persuaded that it was more likely than not that the Supplier marketed and/or sold membership to 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 is 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 X, 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 X as an investment in breach of Regulation 14(3).

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

³ The PR has argued that Fractional Club membership amounted to an Unregulated Collective Investment Scheme, however this was considered and rejected in the judgment in *R (on the application of Shawbrook Bank Ltd) v Financial Ombudsman Service Ltd* and *R (on the application of Clydesdale Financial Services Ltd (t/a Barclays Partner Finance)) v Financial Ombudsman Service* [2023] EWHC 1069 (Admin).

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 X and the Lender under the Credit Agreement and related Purchase Agreement as the case law on Section 140A makes it clear that regulatory breaches do not 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 am to conclude that a breach of Regulation 14(3) led to a credit relationship between X and the Lender that was unfair to them and warranted relief as a result, whether the Supplier's breach of Regulation 14(3) led them 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 was not an important and motivating factor when X decided to go ahead with her purchase. For example, from the PR's notes of a call it said it had with X in March 2019, after she was asked the question 'why did you buy this' X's recorded response was "well it was a slick presentation...and its hard pressure" and not that the prospect of a financial gain or profit played some material part in her decision.

Also, earlier in those same notes it was recorded that X said she was told the purchase was an investment and "after a certain time you can sell it back and get your money back". I think the prospect of getting one's money back is a rather different one from making a financial gain or profit. Free holidays is not the same motivation as the prospect of making money from something.

I am conscious that a 'statement of truth' was provided by X in February 2021. This appears to elaborate further on some of the comments made by her in the call notes taken by the PR in March 2019. However, the emphasis on getting her money back as opposed to making a financial gain or profit remains in this statement..."

"... So, I don't think it offers much support to an argument that the prospect of a financial gain or profit played some material part in X's decision to purchase.

This doesn't mean X 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 X 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 am not persuaded that X'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 do not think the credit relationship between X and the Lender was unfair to them 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 X was not given sufficient information at the Time of Sale by the Supplier about membership, including about the ongoing costs of Fractional Club membership and the fact that X's heirs could inherit these costs.

As I've already indicated, the case law on Section 140A makes it clear that it does not 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.

I acknowledge that it is also possible that the Supplier did not give X sufficient information, in good time, on the various charges she could have been subject to as Fractional Club members in order to satisfy the requirements of Regulation 12 of the Timeshare Regulations (which was concerned with the provision of 'key information'). But even if that was the case, I cannot see that the ongoing costs of membership were applied unfairly in practice. And as neither X nor the PR have persuaded me that she would not have pressed ahead with her purchase had the finer details of the Fractional Club's ongoing costs been disclosed by the Supplier in compliance with Regulation 12, I cannot see why any failings in that regard are likely to be material to the outcome of this complaint given its fact and circumstances.

As for the PR's argument that X's heirs would inherit the on-going management charges, I fail to see how that could be the case or that it could have led to an unfairness that warrants a remedy.

X's Commission Complaint

*I note that one of X other concerns relates to alleged payments of commission by the Lender to the Supplier for acting as a credit broker and arranging the Credit Agreement. The Supreme Court's recent judgment *Johnson v FirstRand Bank Ltd, Wrench v FirstRand Bank Ltd and Hopcraft v Close Brothers Ltd* [2025] UKSC 33 ('Johnson, Wrench and Hopcraft') clarified the law on payments of commission – albeit in the context of car dealers acting as credit brokers. In my view, the Supreme Court's judgment sets out principles which appear capable of applying to credit brokers other than car dealer–credit brokers. At present, I do not know enough about the relevant arrangements in place at the Time of Sale. So, once I know more, I will finalise my findings on this complaint.*

Conclusion

In conclusion, as things currently stand, I do not 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 am not persuaded that the Lender was party to a credit relationship with X under the Credit Agreement that was unfair to them 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 them.

*But, as I've already said, it is necessary to wait for information on the relevant arrangements (considered in *Johnson, Wrench and Hopcraft*) between the Lender and Supplier before finalising my thoughts on the merits of this complaint.*

The PR did not agree with my provisional decision and provided further comments and evidence it wished for me to consider.

The Lender did not respond to my provisional decision.

I then contacted both parties setting out my thoughts on X's concerns about the payment of

commission from the Lender to the Supplier at the Time of Sale. I said:

“The PR says that a payment of commission from the Lender to the Supplier at the Time of Sale should lead me to uphold this complaint because, simply put, information in relation to that payment went undisclosed at the Time of Sale.

As both sides already know, the Supreme Court handed down an important judgment on 1 August 2025 in a series of cases concerned with the issue of commission: Johnson v FirstRand Bank Ltd, Wrench v FirstRand Bank Ltd and Hopcraft v Close Brothers Ltd [2025] UKSC 33 (‘Hopcraft, Johnson and Wrench’).

The Supreme Court ruled that, in each of the three cases, the commission payments made to car dealers by lenders were legal, as claims for the tort of bribery, or the dishonest assistance of a breach of fiduciary duty, had to be predicated on the car dealer owing a fiduciary duty to the consumer, which the car dealers did not owe. A “disinterested duty”, as described in Wood v Commercial First Business Ltd & ors and Business Mortgage Finance 4 plc v Pengelly [2021] EWCA Civ 471, is not enough.

However, the Supreme Court held that the credit relationship between the lender and Mr Johnson was unfair under Section 140A of the CCA because of the commission paid by the lender to the car dealer. The main reasons for coming to that conclusion included, amongst other things, the following factors:

- 1. The size of the commission (as a percentage of the total charge for credit). In Mr Johnson’s case it was 55%. This was “so high” and “a powerful indication that the relationship...was unfair” (see paragraph 327);*
- 2. The failure to disclose the commission; and*
- 3. The concealment of the commercial tie between the car dealer and the lender.*

The Supreme Court also confirmed that the following factors, in what was a non-exhaustive list, will normally be relevant when assessing whether a credit relationship was/is unfair under Section 140A of the CCA:

- 1. The size of the commission as a proportion of the charge for credit;*
- 2. The way in which commission is calculated (a discretionary commission arrangement, for example, may lead to higher interest rates);*
- 3. The characteristics of the consumer;*
- 4. The extent of any disclosure and the manner of that disclosure (which, insofar as Section 56 of the CCA is engaged, includes any disclosure by a supplier when acting as a broker); and*
- 5. Compliance with the regulatory rules.*

From my reading of the Supreme Court’s judgment in Hopcraft, Johnson and Wrench, it sets out principles which apply to credit brokers other than car dealer–credit brokers. So, when considering allegations of undisclosed payments of commission like the one in this complaint, Hopcraft, Johnson and Wrench is relevant law that I’m required to consider under Rule 3.6.4 of the Financial Conduct Authority’s Dispute Resolution Rules (‘DISP’).

But I don’t think Hopcraft, Johnson and Wrench assists X in arguing that her credit relationship with the Lender was unfair to her for reasons relating to commission given the facts and circumstances of this complaint.

I haven’t seen anything to suggest that the Lender and Supplier were tied to one another contractually or commercially in a way that wasn’t properly disclosed to X, nor have I seen anything that persuades me that the commission arrangement between them gave the

Supplier a choice over the interest rate that led X into a credit agreement that cost disproportionately more than it otherwise could have.

I acknowledge that it's possible that the Lender and the Supplier failed to follow the regulatory guidance in place at the Time of Sale insofar as it was relevant to disclosing the commission arrangements between them.

But as I've said before, the case law on Section 140A makes it clear that regulatory breaches do not 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. And with that being the case, it isn't necessary to make a formal finding on that because, even if the Lender and the Supplier failed to follow the relevant regulatory guidance at the Time of Sale, it is for the reasons set out below that I don't currently think any such failure is itself a reason to find the credit relationship in question unfair to X.

In stark contrast to the facts of Mr Johnson's case, the amount of commission paid by the Lender to the Supplier for arranging the Credit Agreement that X entered into wasn't high. At £697.32, it was only 4% of the amount borrowed and even less than that (3.7%) as a proportion of the charge for credit. So, had she known at the Time of Sale that the Supplier was going to be paid a flat rate of commission at that level, I'm not currently persuaded that she either wouldn't have understood that or would have otherwise questioned the size of the payment at that time. After all, X wanted Fractional Club membership and had no obvious means of her own to pay for it. And at such a low level, the impact of commission on the cost of the credit she needed for a timeshare she wanted doesn't strike me as disproportionate. So, I think she would still have taken out the loan to fund purchase at the Time of Sale had the amount of commission been disclosed.

What's more, based on what I've seen so far, the Supplier's role as a credit broker wasn't a separate service and distinct from its role as the seller of timeshares. It was simply a means to an end in the Supplier's overall pursuit of a successful timeshare sale. I can't see that the Supplier gave an undertaking – either expressly or impliedly – to put to one side its commercial interests in pursuit of that goal when arranging the Credit Agreement. And as it wasn't acting as an agent of X but as the supplier of contractual rights she obtained under the Purchase Agreement, the transaction doesn't strike me as one with features that suggest the Supplier had an obligation of 'loyalty' to her when arranging the Credit Agreement and thus a fiduciary duty.

Overall, therefore, I'm not currently persuaded that the commission arrangements between the Supplier and the Lender were likely to have led to a sufficiently extreme inequality of knowledge that rendered the credit relationship unfair to X.

So, given all of the factors I've looked at both here and in my provisional decision, and having taken all of them into account, I'm still not persuaded that the credit relationship between X and the Lender under the Credit Agreement and related Purchase Agreement was unfair to her. And as things currently stand, I don't think it would be fair or reasonable that I uphold this complaint on that basis.

Commission: The Alternative Grounds of Complaint

While I've provisionally found that X's credit relationship with the Lender wasn't unfair to her for reasons relating to the commission arrangements between it and the Supplier, two of the grounds on which I came to that conclusion also constitute separate and freestanding complaints to X's complaint about an unfair credit relationship. So, for completeness, I've considered those grounds on that basis here.

The first ground relates to whether the Lender is liable for the dishonest assistance of a breach of fiduciary duty by the Supplier because it took a payment of commission from the Lender without telling X (i.e., secretly). And the second relates to the Lender's compliance with the regulatory guidance in place at the Time of Sale insofar as it was relevant to disclosing the commission arrangements between them.

However, for the reasons I set out above, I'm not persuaded that the Supplier – when acting as credit broker – owed X a fiduciary duty. So, the remedies that might be available at law in relation to the payment of secret commission aren't, in my view, available to her. And while it's possible that the Lender failed to follow the regulatory guidance in place at the Time of Sale insofar as it was relevant to disclosing the commission arrangements between it and the Supplier, I don't think any such failure on the Lender's part is itself a reason to uphold this complaint because, for the reasons I also set out above, I think she would still have taken out the loan to fund her purchase at the Time of Sale had there been more adequate disclosure of the commission arrangements that applied at that time.

So again, in conclusion, given the facts and circumstances of this complaint, I still do not think that the Lender acted unfairly or unreasonably when it dealt with X's Section 75 claim. I am also not persuaded that the Lender was party to a credit relationship with her under the Credit Agreement and related Purchase 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."

The PR said it accepted my findings on this part of X's complaint.

I am therefore finalising my decision.

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.

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. 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

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 is 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 provisional decision in the main relate to the issue of whether the credit relationship between X and the Lender was unfair. In particular, the PR has provided further comments in relation to whether the membership was sold to X as an investment at the Time of Sale.

As outlined in my provisional decision, 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 provisional decision. 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 provisional decision. 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 PR has provided some further comments and evidence which in my view relate to whether Fractional Club membership was marketed as an investment in breach of the prohibition in Regulation 14(3) of the Timeshare Regulations. However, as I explained in my provisional decision, while the Supplier's sales processes left open the possibility that the sales representative may have positioned Fractional Club membership as an investment, it isn't necessary to make a finding on this as it is not determinative of the outcome of the complaint. I explained that Regulatory breaches do not automatically create unfairness and that such breaches and their consequences (if there are any) must be considered in the round, rather than in a narrow or technical way.

The PR's comments and evidence in this respect do not persuade me that I should uphold X's complaint because they do not make me think it's any more likely that the Supplier's breach of Regulation 14(3) led X to enter into the Purchase Agreement and the Credit Agreement.

The PR has also provided its further thoughts as to X's likely motivations for purchasing Fractional Club membership. I recognise it has interpreted X's testimony differently to how I have and thinks it points to her having been motivated by the prospect of a financial gain from Fractional Club membership.

In my provisional decision I explained the reasons why I didn't think X's purchase was motivated by the prospect of a financial gain (i.e., a profit). And although I have carefully considered the PR's arguments in response to this, I'm not persuaded the conclusion I reached on this point was unfair or unreasonable.

The PR asserts that where X said in her testimony that she was told she would get her money back, this should be interpreted as a hope or expectation that when the Allocated Property was sold at the end of the membership term she was going to get back:

- all chargeable interest under the credit agreement;
- all the annual maintenance fees paid to the Supplier over the term of her membership, and;
- the initial cost of Fractional Club membership

The PR said that a return of these items would have amounted to a profit as they added up to more than the purchase price of X's Fractional Club membership. So, it says that X's references to getting her money back in her testimony should be read that she hoped or expected to receive a profit or financial gain. And therefore, when X said she purchased Fractional Club membership mainly because she thought she would get her money back, this shows her purchase was motivated by the prospect of a financial gain or profit.

X doesn't say in her testimony what she meant by getting her money back or whether it included the items the PR said it did. But I don't think the PR's interpretation amounts to a profit anyway. To my mind, to make a profit X would have to improve her financial situation after all expenses have been deducted from the money she got back. So, I think X's statement she hoped to receive all her money back could, at best, be interpreted as her hoping or expecting to break even. I do not agree with the PR's assertion therefore that X's references to getting her money back in her testimony should be interpreted that she hoped or expected to receive a profit or financial gain. It follows that I don't think she could have been motivated by such a prospect when it was not seemingly in her contemplation.

The PR also said that it's unlikely X was motivated to make her purchase by the prospect of taking holidays as she said in her testimony that she "was never that big on taking sunshine holidays". However, X said she was on a holiday at the Time of Sale in Spain. And while I recognise the accommodation was free, she said she still paid for the flights. So, she must have had some interest in taking them. And in any event, it seems very unlikely to me given X said she only hoped to get her money back at the end of her membership term that she'd have had no interest in using the holiday element of Fractional Club membership. It would make no sense to invest thousands of pounds for a period of nearly twenty years only to get back what you put in at the end, and no more, if there was no interest in the ability to take holidays in the interim.

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 X's purchasing decision. And for that reason, I do not think the credit relationship between X and the Lender was unfair to her even if the Supplier had breached Regulation 14(3).

S140A conclusion

Given all of the factors I've looked at in this part of my decision, including the relevant relationships, arrangements and payments between X, the Lender and the Supplier and having taken all of them into account, I'm not persuaded that the credit relationship between X and the Lender under the Credit Agreement and related Purchase Agreement was unfair to her. So, I don't think it is fair or reasonable that I uphold her complaint on that basis.

Conclusion

In conclusion, given the facts and circumstances of this complaint, I do not think that the Lender acted unfairly or unreasonably by not meeting X's Section 75 claims, and I am 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 I have explained above, I do not uphold X's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask X to accept or reject my decision before 8 January 2026.

Michael Ball
Ombudsman