DRN-6014008

The complaint

Mrs R'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 a claim under Section 75 of the CCA.

What happened

Mrs R, together with her husband, was a member of a timeshare provider (the 'Supplier'), having purchased a trial membership previously. 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 29 May 2018 (the 'Time of Sale'). They entered into an agreement with the Supplier to buy 1,390 fractional points at a cost of £20,832 (the 'Purchase Agreement'). But, after trading in their previous trial membership, they ended up paying £16,437 for their Fractional Club membership.

Fractional Club membership was asset backed – which meant it gave Mr and Mrs R 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 R paid for their Fractional Club membership by taking finance of £20,397 from the Lender (the 'Credit Agreement') in her sole name. This loan also consolidated the outstanding balance of their previous loan, used to purchase their trial membership.

Mrs R – using a professional representative (the 'PR') – wrote to the Lender on 14 March 2023 (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 R's concerns as a complaint and issued its final response letter on 6 April 2023, rejecting it on every ground.

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

Mrs R disagreed with the Investigator's assessment and asked for an Ombudsman's decision.

Another Ombudsman considered the matter and issued a provisional decision (the 'PD') dated 3 September 2025. In that decision, they said:

"*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 R was:

1. *told that she had purchased an investment that would "considerably appreciate in value".*
2. *promised a considerable return on her investment because she was told that she would own a share in a property that would considerably increase in value.*
3. *told that she could sell their Fractional Club membership to the Supplier or easily to third parties at a profit.*
4. *made to believe that she would have access to "the holiday apartment" at any time all year round.*

However, neither points 1 nor 2 strike me as misrepresentations even if such representations 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. And even if the Supplier's sales representatives went further and suggested that the share in question would increase in value, perhaps considerably so, that sounds like nothing more than a honestly held opinion as there isn't any accompanying evidence to persuade me that the relevant sales representative(s) said something that, while an opinion, amounted to a statement of fact that they did not hold or could not have reasonably held.

As for points 3 and 4, while it's possible that Fractional Club membership was misrepresented at the Time of Sale for one or both of those reasons, I don't think it's probable. They're given little to none of the colour or context necessary to demonstrate that the Supplier made false statements of existing fact and/or opinion. And as there isn't any other evidence on file to support the suggestion that Fractional Club membership was misrepresented for these reasons, I don't think it was.

So, while I recognise that Mrs R - 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.

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

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 R and the Lender along with all of the circumstances of the complaint, I don't think the credit relationship between them was likely to have been rendered unfair for the purposes of Section 140A.

When coming to that conclusion, and in carrying out my analysis, I have looked at:

1. *The standard of the Supplier's commercial conduct – which includes its sales and marketing practices at the Time of Sale along with any relevant training material;*
2. *The provision of information by the Supplier at the Time of Sale, including the contractual documentation and disclaimers made by the Supplier;*
3. *Evidence provided by both parties on what was likely to have been said and/or done at the Time of Sale;*

4. *The inherent probabilities of the sale given its circumstances; and, when relevant*
5. *Any existing unfairness from a related credit agreement.*

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

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

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

The PR says, for instance, that the right checks weren't carried out before the Lender lent to Mrs R. I haven't seen anything to persuade me that was the case in this complaint given its 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 R 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 am not satisfied that the lending was unaffordable for Mrs R.

Connected to this is the suggestion by the PR that the Credit Agreement was arranged by an unauthorised credit broker, the upshot of which is to suggest that the Lender wasn't permitted to enforce the Credit Agreement. However, it looks to me like Mrs R knew, amongst other things, how much she was borrowing and repaying each month, who she was borrowing from and that she was borrowing money to pay for Fractional Club membership. And as the lending doesn't look like it was unaffordable for her, even if the Credit Agreement was arranged by a broker that didn't have the necessary permission to do so (which I make no formal finding on), I can't see why that would lead to Mrs R's alleged financial loss – such that I can say that the credit relationship in question was unfair on her as a result. And with that being the case, I'm not persuaded that it would be fair or reasonable to tell the Lender to compensate her, even if the loan wasn't arranged properly.

The PR also says that there were one or more unfair contract terms in the Purchase Agreement. But as I can't see that any such terms were operated unfairly against Mrs R in practice, nor that any such terms led her to behave in a certain way to their detriment, I'm not persuaded that any of the terms governing Fractional Club membership are likely to have led to an unfairness that warrants a remedy.

Overall, therefore, I don't think that Mrs R'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 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 the 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 Mrs R'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 – saying, in summary, that Mrs R was told by the Supplier that Fractional Club membership was the type of investment that would only increase in value.

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 Mrs R 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.

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 Mrs R 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 the 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 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 Mrs R, 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 R 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.

<u>Was the credit relationship between the Lender and Mrs R rendered unfair?</u>

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 R 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 Mrs R 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 was not an important and motivating factor when she and her husband decided to go ahead with their purchase. Mrs R does say in her testimony:

> *"We were led to believe that we would receive some monetary benefit at the end of our term, which we felt was a bit of an investment."*

However, within a long testimony this is the only reference about being sold the membership as an investment. In the same testimony she also says:

> *"Leading up to the decision, we were given a tour by one of the sales representatives of numerous different types of accommodation which we were led to believe would be readily available to us through the scheme. We were bowled over by the standard of accommodation shown to us and we stated from the very beginning that we would only be able to utilise our 2 weeks during school holidays as I ([Mrs R]) work in a school."*

Her statement focusses on the holiday rights, accommodation standards, and her issues being able to book holidays at the right time, during school holidays. Nowhere in her testimony does she indicate that she and her husband entered the Purchase Agreement with the view to make any financial gain and that this was a driving factor.

That doesn't mean she wasn't interested in a share in the Allocated Property. After all, that wouldn't be surprising given the nature of the product at the centre of this complaint. But as Mrs R doesn't persuade me that their purchase was motivated by their 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 R and her husband 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 Mrs R'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 gone ahead with the 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 Mrs R and the Lender was unfair to her, even if the Supplier had breached Regulation 14(3)."

So, in conclusion, given the facts and circumstances of this complaint, that Ombudsman did not think that the Lender acted unfairly or unreasonably when it dealt with Mrs R's Section 75 claim, and they were 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, they could see no other reason why it would be fair or reasonable to direct the Lender to compensate her.

The Lender did not respond to the PD. The PR did respond – they did not accept the PD and provided some further comments and evidence they wish to be considered.

The Ombudsman who issued the provisional decision then left this Service. So, the complaint was passed to me to consider. Having considered everything, along with the other Ombudsman's provisional decision (as outlined above) I communicated to both parties that I agreed with the provisional conclusions reached, and for the same reasons given in that decision. I also set out how I was not persuaded that Mrs R's credit relationship with the Lender wasn't unfair to her for reasons relating to the commission arrangements between it and the Supplier. Neither party responded to this communication, or provided any further comments.

So, I'm now finalising my decision.

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, 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 is not necessary to set out that context in detail here. But I would add that the following regulatory rules/guidance are also relevant:

<u>The Consumer Credit Sourcebook ('CONC') – Found in the Financial Conduct Authority's (the 'FCA') Handbook of Rules and Guidance</u>

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]

<u>The FCA's Principles</u>

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'm satisfied that this complaint should not be upheld, for broadly the same reasons as set out in the provisional decision.

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 PD only relate to the issue of whether the credit relationship between Mrs R and the Lender was unfair. In particular, the PR has provided further comments in relation to whether the membership was sold to Mrs R as an investment at the Time of Sale. They also argued for the first time that the payment of a commission by the Lender to the Supplier led to an unfair credit relationship.

As outlined in the PD, the PR originally raised various other points of complaint, all of which were addressed at that time. But they didn't make any further comments in relation to those in their response to the PD. Indeed, they haven't said they disagree with any of the provisional conclusions reached 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 reach different conclusions in relation to them than those which were set out in the PD. So, I'll focus here on the PR's points raised in response.

As I've also outlined above, following the provisional decision, I also communicated to both parties how I was not persuaded that Mrs R's credit relationship with the Lender was unfair to her for reasons relating to the commission arrangements between it and the Supplier. Neither party responded to this, nor provided any further comments on this point. So, it follows that my conclusions on that point remain the same as previously set out to both parties and, since it hasn't been disputed further, I won't be commenting on it any further in this decision.

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

As explained in the PD, in summary the focus of Mrs R's testimony is the holidays the membership could provide. In particular, she mentions the standard of accommodation and issues with availability. And while it was acknowledged that Mrs R had referred in her testimony to the membership as an investment and that they were led to believe at the Time of Sale that they would "*receive some monetary benefit at the end of our term*", this only represents what they were potentially told, rather than what motivated them to purchase.

So, the other Ombudsman wasn't persuaded that the evidence suggested that Mrs R purchased Fractional Club membership in whole or in part down to any breach of Regulation 14(3). And, having reviewed everything, I wasn't persuaded that was the case either.

I agree with PR that just because a purchaser was also interested in taking holidays with the Supplier, that does not preclude them also being motivated to take out Fractional Club membership by any investment element – indeed I would find it surprising if any members were not interested in taking holidays, given the nature of the product. But, for the same reason as those already given in the provisional decision, I'm not persuaded from the testimony, that Mrs R has adequately demonstrated that the promise of profit was a

motivating factor in their decision to move ahead with the purchase – principal or otherwise.

The PR says that as the Supplier's pricing sheet set out the "unit share" Mrs and Mr R acquired under their Fractional Club membership, this shows the investment element played "quite an important role" in convincing them to purchase it. But I don't agree with that analysis. The pricing sheet was a proforma document that captured a number of details about the purchase in a standardised format. And the Supplier would have recorded that information irrespective of the customer's motivations for purchasing. So, I don't consider this document offers any insight into Mrs and Mr R's motivation for making their purchase.

The PR also said that in the judgment handed down in *Shawbrook & BPF v FOS*, it was not challenged that the product in question was marketed and sold as an investment. But, as explained in the provisional decision, the Timeshare Regulations did not ban products such as the Fractional Club. They just regulated how such products were marketed and sold. And the judgment referred to did not make a blanket finding that all such products were mis-sold in the way the PR appears to be suggesting. Any complaint needs to be considered in the light of its specific circumstances. So just because the complaints that were subject to judicial review were upheld, it does not follow I must (or should) also uphold Mrs R's complaint here.

So again, 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 and Mr R'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 R and the Lender was unfair to her for this reason.

S140A conclusion

Given all of the factors I've looked at in this part of my decision, and having taken all of them into account, I'm not persuaded that the credit relationship between Mrs R 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 this 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 when it dealt with Mrs R's Section 75 claim, 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 set out above, I don't uphold this complaint.

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

Fiona Mallinson
Ombudsman