DRN-6021995

The complaint

Mrs O'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.

Background to the Complaint

Mrs O, along with her partner, Mr O, made the following purchases from a timeshare provider (the 'Supplier'):

- A trial membership on 11 October 2009 ('Purchase Agreement 1')
- 1,000 points in the Vacation Club – having traded in the trial membership. ('Purchase Agreement 2')
- 1,494 fractional points in the Fractional Club on 28 October 2012 for a total price of £9,952 – having traded in their allocation of 1,000 points. ('Purchase Agreement 3')

As this complaint is only concerned with Purchase Agreement 3, that is the 'Time of Sale' for the purposes of my decision.

Fractional Club membership was asset backed – which meant it gave Mrs O more than just holiday rights. It also included a share in the net sale proceeds of a property named on the relevant purchase agreement (which I'll refer to as the 'Allocated Property' after her membership term ends.

Mrs O paid for her fractional points by taking out a loan of £10,950 with the Lender (the 'Credit Agreement'), which included the full price of Purchase Agreement 3, and the first maintenance fee payment of £998.

Mrs O – using a professional representative (the 'PR') – wrote to the Lender on 13 December 2017 (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 O's concerns as a complaint and issued its final response letter on 5 February 2018, 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 O disagreed with the Investigator's assessment and asked for an Ombudsman's decision – which is why it was passed to me.

I issued my provisional findings to the parties on 11 July 2025. In my provisional decision, I said:

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 was said in the Letter of Complaint that Fractional Club membership had been misrepresented by the Supplier at the Times of Sale because Mrs O 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 was buying an interest in a specific piece of "real property" when that was not true.*
(3) *told by the Supplier that Fractional Club membership was an "investment" when that was not true.*
(4) *told that the maintenance fees would not rise above the rate of inflation during the term of the ownership when that was not true.*
(5) *told by the Supplier that they could book holidays at any time of year for however long they wanted, but this was not true as they found they couldn't book holidays due to lack of availability and the cost of the flights.*
(6) *told by the Supplier that they could expect "better quality", but this was not true as the accommodation was not of the same standard they were shown and there were particular issues with one holiday, which I will detail below.*

The words and/or phrases allegedly used by the Supplier to misrepresent Fractional Club for the reason given in point (1) were set out by the PR in the Letter of Complaint: "there would be a sale date, after which the property would be sold, and our clients were given a sale date of 31st December 2031."

The PR says that such a representation was untrue because the "Sales Process" begins on the Sale Date as defined in the Fractional Club Rules, and under Rule 9, particularly Rules 9.2.9 and 9.2.12, 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 phrase 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 contracts Mrs O entered into. And while, under Rules 9.1 and 9.2.9 of 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 points (2) and (3), neither of them strikes 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 – 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.

Regarding point (4), I've not been shown any evidence that Mrs O was told the maintenance fees would only increase in line with the rate of inflation. Her own testimony says that she was told the amount would be a "small, reasonable sum". And the testimony provided by Mrs and Mr O says that the fee had increased to "circa £1,100 per annum" at the time that they wished to relinquish the timeshare which, to me, represents only a small increase from the first fee of £998 charged by the Supplier at the Time of Sale. Further, the Information Statement provided by the Supplier, which was signed by Mrs O at the Time of Sale, explains that the fee is subject to "increase or decrease as determined by the costs of managing the Project". So, I'm not persuaded that the Supplier misrepresented how the annual maintenance fees would be calculated to Mrs O.

Finally, points (5) and (6) relate to the holidays taken by Mrs O and her family members. From what I know about how Fractional Club products worked, and how they were sold, I think it's likely that Mrs O was given examples of the types of holidays she could book using her annual points allocation. I think it's understandable that availability was more limited during peak periods, such as school holidays. And the Information Statement says:

"Owners should note that accommodation during school holidays should be booked as far in advance as possible. All bookings are subject to availability and are handled on a first-come first-served basis."

So, I don't think the Supplier misrepresented the type of holidays that Mrs O could receive through the Fractional Club membership.

I have also thought about these points as allegations that the Supplier breached the contract below.

So, while I recognise that Mrs O - 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

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[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)."

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.

Mrs O says that she and Mr O could not holiday where and when they wanted to. That was framed, in the Letter of Complaint, as part of their complaint about the fairness or otherwise of their credit relationships with the Lender under Section 140A of the CCA. 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 signed by Mrs O states that the availability of holidays was/is subject to demand. It also looks like she and Mr O made use of their 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.

In the testimony, which appears to have been written from Mr O's perspective, Mrs O describes a particular stay in a hotel she booked through the exchange facility that she received through the Fractional Club membership. The testimony says:

"The last time we used [the Supplier] Timeshare was in May 2015, where my wife too our son on holiday to Tanca Manna, Sardinia. Upon reflection, it was a complete disaster for the pair of them and we were left feeling very distraught and disappointed. The additional administration cost for bookings with [the Supplier] was £159, and the return flights were circa £1,200. They arrived early at the reception, and were made to wait well over an hour before being attended to. When shown to their room, they discovered no kitchen, as they had been expecting from the booking. When they went to relax by the pool, they discovered a filthy, disgusting swimming pool with dirty brown water, which they could not use or enjoy. The accommodation venue itself was in the middle of nowhere, and not close to the beach, as [the Supplier] had advised. They were required to take a local bus, which took 4 hours to transport them to the beach. The onsite facilities were lacking as the restaurant was closed throughout their stay and there was no supermarket to buy food for the duration of their stay. As a family, we were all outraged by the poor holidays that [the Supplier] were offering. When my wife and son returned home to the UK, and we complained, [the Supplier] would only refund the cost of the £159 administration fee paid, but offered us no genuine compensation."

I appreciate this experience was disappointing for Mrs O and her son, but I'm not persuaded that the contract was breached by the Supplier. I've reached this outcome for the following reasons:

I haven't been shown any evidence to support the allegations that the hotel and its facilities were of such a low standard that this rendered the contract between Mrs and Mr O and the Supplier to have been breached. I've searched for this property and can see that the beach is accessible via a footpath directly across the road, so I can't agree that the Supplier has misled Mrs O when it says that it was close to a beach. I'm unsure why Mrs O says that the beach was only accessible via a four-hour bus journey. And I think she would have been

able to check if it was unsuitable for her before she travelled. From what I've seen, I think the Supplier acted reasonably by offering to refund the administration fee to Mrs O.

I do appreciate that Mrs O and her family were left disappointed by that holiday, but I do not think the Lender is liable to pay Mrs O 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 Times 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 relationships between Mrs O 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 their circumstances.*

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

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

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

They include, for various reasons, the allegation that the Supplier misled Mrs O and carried on unfair commercial practices under Regulations 5 and 6 of the CPUT Regulations. However, as Regulations 5 and 6 state, commercial practices only amount to misleading actions or omissions if, in addition to satisfying one or more of the specific matters set out in those provisions, they cause or are likely to cause the average consumer to take a transactional decision they would not have taken otherwise. And as I haven't seen enough evidence to persuade me that, if there were any such actions or omissions at the Time of Sale (which I make no formal finding on), they led Mrs O to make the purchasing decisions she did, I'm not persuaded that anything done or nor done by the Supplier amounted to an unfair commercial practice for the purposes of those provisions.

The PR also alleges that the Supplier acted unfairly under Regulation 7 Schedule 1 of the CPUT Regulations. But given the limited evidence in this complaint, I am not persuaded that the Supplier did.

In addition, the PR also says that:

(1) *the right checks weren't carried out before the Lender lent to Mrs O.*

(2) *Mrs O was pressured by the Supplier into purchasing Fractional Club membership at the Time of Sale.*
(3) *there was one or more unfair contract terms in the Purchase Agreement.*

However, as things currently stand, none of these allegations 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 before the Lender agreed to lend to Mrs O, given this complaint's circumstances. But even if I were to find that the Lender failed to do everything it should have when it agreed to lend (and I make no such finding), I would have to be satisfied that the money lent to Mrs O was actually unaffordable before also concluding that she lost out as a result and then consider whether the credit relationship between her and the Lender was unfair to her for this reason. But from the information provided, I am not satisfied that any of the lending was unaffordable for Mrs O.

I acknowledge that Mrs O may have felt weary after a sales process that went on for a long time. But she says little about what was said and/or done by the Supplier during the sales presentations 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. Moreover, she did go on to upgrade her first purchase – which I find difficult to understand if the reason she went ahead with the purchase in question was because she was pressured into it. And with all of that being the case, there is insufficient evidence to demonstrate that Mrs O made the decision to purchase Fractional Club membership because her ability to exercise that choice was significantly impaired by pressure from the Supplier.

As for the PR's argument that there were one or more unfair contract terms in the Purchase Agreement, I can't see that any such terms were operated unfairly against Mrs O in practice, nor that any such terms led her to behave in a certain way to her detriment. And with that being the case, 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 O'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 were 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 Mrs O's Fractional Club memberships 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 Mrs O say that the Supplier did exactly that at the Time of Sale – saying, in summary, that she was told by the Supplier that the Allocated Property 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 O the prospect of a financial return – whether or not, like all investments, that was more than what they 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 O 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 her as an investment, i.e. told them or led them to believe that Fractional Club membership offered them 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 O, the financial value of her share in the net sales proceeds of the Allocated Properties 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 O 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.

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 relationships between Mrs O and the Lender under the Credit Agreements and related Purchase Agreements 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 O 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 Agreements and the Credit Agreements 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 Mrs O decided to go ahead with her purchase. 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 products at the centre of this complaint. But as Mrs O's testimony doesn't persuade me that her purchase was motivated by her shares 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 Mrs O'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 Mrs O and the Lender was unfair to her even if the Supplier had breached Regulation 14(3).

The provision of information by the Supplier at the Times of Sale

The PR says that Mrs O was not given sufficient information at the Time of Sale by the Supplier about the ongoing costs of Fractional Club membership. The PR also says that the contractual terms governing the ongoing costs of membership and the consequences of not meeting those costs were unfair contract terms.

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 Mrs O sufficient information, in good time, on the various charges she could have been subject to as a Fractional Club member 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 Mrs O 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 there were one or more unfair contract terms in the Purchase Agreements, I can't see that any such terms were operated unfairly against Mrs O in practice, nor that any such terms led her to behave in a certain way to her detriment. And with that being the case, 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.

In short, I concluded that I did not think that the Lender acted unfairly or unreasonably when it dealt with the relevant Section 75 claims, and I was not persuaded that the Lender was

party to a credit relationship with Mrs O under the Credit Agreement that was unfair to her for the purposes of Section 140A of the CCA – nor do I see no other reason why it would be fair or reasonable to direct the Lender to compensate her.

At the time of my provisional decision I deferred my conclusions on the matter of commission disclosure in order to review that issue further. I've since written to the parties setting out my thoughts on why I wasn't persuaded to uphold this aspect of the complaint.

Applying the principles and factors set out in the Supreme Court judgment[3] handed down on 1 August 2025, I found nothing to suggest to suggest that the Lender and Supplier were tied to one another contractually or commercially in a way that wasn't properly disclosed to Mrs O. Nor did I see anything that persuaded me that the commission arrangements between them gave the Supplier a choice over the interest rate which led Mrs O into a credit agreement that cost disproportionately more than it otherwise could have.

Further, the flat rate and amount of commission paid was such that it gave me no reason to think that any failure to disclose it to Mrs O had a material impact on her decision to enter into the Credit Agreement. At £1,122.38, it was only 10.3% of the amount borrowed and even less than that (5.6%) as a proportion of the charge for credit. That didn't strike me as disproportionate; nor were the surrounding circumstances otherwise capable of rendering unfair the credit relationship between the Lender and Mrs O such that the Lender needed to take any action in redress.

I didn't find any of the other arguments put forward demonstrated that the credit agreement between Mrs O and the Lender was unfair to her under section 140A of the CCA. Absent any other reason why it would be fair or reasonable to direct the Lender to compensate Mrs O, I said I didn't propose to uphold the complaint.

Responses to my provisional findings

The Lender accepted my provisional decision. The PR didn't accept the proposed outcome. It submitted further comments and evidence in support of Mrs O's position.

Having received and reviewed these, I'm now proceeding with my final decision.

The legal and regulatory context

The legal and regulatory context that I think is relevant to this complaint has been shared in several hundred published decisions on very similar complaints, as well as in previous correspondence with the parties. So there's no need for me to set this out again in detail here. I simply remind the parties that our rules[4] say that in considering what is fair and reasonable in all the circumstances of the complaint, I will 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.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and

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[3] *Johnson v FirstRand Bank Ltd, Wrench v FirstRand Bank Ltd and Hopcraft v Close Brothers Ltd* [2025] UKSC 33 ("*Hopcraft, Johnson and Wrench"*)

[4] Financial Conduct Authority ("FCA") Handbook – DISP 3.6.4R ("R" denotes a rule).

reasonable in the circumstances of this complaint.

After considering the case afresh and having regard for what's been said in response to my provisional decision and in my subsequent correspondence, I find it offers no persuasive reason to depart from the conclusions I've previously set out. I'll explain why.

The PR originally raised various points of complaint, such as those giving rise to Mrs O's section 75 claim, which I addressed in my provisional decision. In its response, it hasn't made any further comments in relation to most of its original points, or said anything that leads me to think it disagrees with my provisional conclusions in relation to those points. So I'll focus here on the points the PR *has* made in response.

The PR's response to my provisional decision relates mainly to the issue of whether the credit relationship between Mrs O and the Lender was unfair *per* section 140A of the CCA. In particular, the PR has provided more comment in relation to whether the membership was sold to Mrs O as an investment at the Time of Sale. It has also made further submissions in support of its position that the payment of a commission by the Lender to the Supplier led to an unfair credit relationship between the Lender and Mrs O.

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

The PR has questioned whether my provisional conclusions run contrary to precedent decisions issued by my ombudsman colleagues and the judgment handed down in *Shawbrook and BPF v FOS*. I don't believe they do. However, for the avoidance of doubt, other decisions issued by other ombudsmen do not have a precedent effect like some court judgments might, and each ombudsman must determine each case on its own specific facts. Further, the judgment referred to did not make a blanket finding that all products of the type that Mrs O purchased were mis-sold in the way the PR appears to be suggesting.

I remind the PR that in my provisional decision I accepted the possibility that Fractional Club membership was marketed and/or sold to Mrs O as an investment, in breach of Regulation 14(3). I went on to explain that relevant case law[5] indicates that in considering the question of relief for any resultant unfairness in the credit relationship, I needed to take into account any material impact of such a breach on Mrs O's decision whether to enter into the Purchase and Credit Agreements. It doesn't strike me that doing so flies in the face of either the handed down judgment or previous decisions the PR has mentioned.

While the PR has referred me to Mrs O's recollections and the Supplier's training materials, I have already considered these and what was said. And I set out in my provisional decision the reasons why I didn't find that evidence sufficiently persuasive that Mrs O's purchase decision would have been any different, given the other motivational factors she had described. Having re-examined Mrs O's statement that remains my view, for the reasons previously given.

So as I said before, whether or not the Supplier marketed or sold Fractional Club membership as an investment in breach of Regulation 14(3), I'm not persuaded Mrs O's decision to make the purchase was materially impacted by the prospect of a financial gain. It follows that I find the credit relationship between Mrs O and the Lender was not rendered unfair to her for this reason.

The provision of information by the Supplier at the Time of Sale

[5] *Carney* and *Kerrigan*

The PR has asked for the documents the lender has provided to evidence the commission arrangements. As the PR will be aware, under DISP 3.5.9R I may, where I consider it appropriate, accept information in confidence (so that only an edited version, summary or description is disclosed to the other party). I'm satisfied that agreements between the Lender and the Supplier are commercially sensitive and that the summary information on commission arrangements we've already shared with the PR is appropriate in this case. I've seen nothing in this case that leads me to think what the Lender has said about the commission arrangements is inaccurate. So there's no reason for me to reach a different finding over those commission arrangements.

As I've noted, the PR has disagreed with my provisional conclusions on whether the Lender should pay redress because of an unfair credit relationship arising in connection with commission arrangements between the Lender and the Supplier. The PR says, in summary, that when the overall circumstances of those arrangements are considered in the round, the credit relationship was plainly unfair. In support of this position the PR has expressed, among other things, that:

- The provisional decision doesn't properly apply the Supreme Court's judgment in *Hopcraft, Johnson and Wrench,* which concluded a range of factors informed whether a credit relationship between a consumer and a lender was unfair
- A conflict of interest existed on the part of the Supplier, who provided neither independent nor competent explanation of the credit
- Failure to disclose payment of commission – irrespective of the size of any payment - was a regulatory breach that goes to the heart of fairness

I have carefully considered the PR's submissions on behalf of Mrs O. But I don't find what it has said offers persuasive grounds for me to reach a different conclusion on this issue.

I've previously set out my thoughts on any impact the Supreme Court's conclusions in *Hopcraft, Johnson and Wrench* has on Mrs O's arguments that her credit relationship with the Lender was unfair to her for reasons relating to commission given the facts and circumstances of this complaint.

The PR's response doesn't offer anything that leads me to think that, for the most part, any of the factors it has referenced were in fact at play in Mrs O's case. It hasn't, for example, provided evidence to show the existence of commercial or contractual ties that were concealed from Mrs O, any persuasive reasons to conclude that the Supplier's role was that of advisor to Mrs O, or to show that any other conflict of interest arose from the roles the Supplier did perform. For such a claim to be successful would require more than the bare assertions that have been made in this case.

In its correspondence the PR has emphasised the regulatory breaches connected with a failure to disclose commission payment. I have already set out why in my view this doesn't automatically lead to an unfair credit relationship for which the Lender needs to offer redress. I remain of that view, the PR's submissions notwithstanding.

Section 140A: 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 remain unpersuaded that the credit relationship between Mrs O and the Lender under the Credit Agreement and related Purchase Agreement was unfair to her such that it warrants the Lender offering any redress.

Commission: The Alternative Grounds of Complaint

In my previous correspondence I mentioned that some of the grounds for complaint about the fairness or otherwise of the credit relationship could also constitute separate and freestanding complaints. I'll reiterate my findings 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 Mrs O (that is, secretly). 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.

For the reasons I set out previously, I'm not persuaded that the Supplier – when acting as credit broker – owed Mrs O 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. For the reasons I have also previously set out, 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.

Conclusion

After careful reconsideration of the facts and circumstances of this complaint, I adopt my provisional conclusions as part of my final decision. For the reasons I've given above and in my earlier correspondence I've mentioned, I don't think the Lender acted unfairly or unreasonably when it dealt with Mrs O's section 75 claims. And I'm not persuaded that the Lender was party to a credit relationship with Mrs O that was unfair to her for the purposes of section 140A of the CCA. Having taken everything into account, I see no other reason why it would be fair or reasonable for me to direct the Lender to compensate Mrs O.

My final decision

For the reasons set out above, my final decision is that I don't uphold Mrs O's complaint about Mitsubishi HC Capital UK Plc trading as Novuna Personal Finance.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs O to accept or reject my decision before 12 January 2026.

Andrew Anderson
Ombudsman