DRN-6029247

Financial Ombudsman Service

The complaint

Mr D's complaint is, in essence, that Mitsubishi HC Capital UK PLC trading as Novuna Consumer Finance ('Novuna') acted unfairly and unreasonably by (1) being party to an unfair credit relationship with him 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.

Background to the complaint

Mr D, jointly with his wife, purchased a Fractional Club timeshare membership (the 'Membership') from a timeshare provider (the 'Supplier') in March 2018. Along with holiday rights, the Membership also provided Mr D and his wife with a share in the net sale proceeds of a designated property at the end of the Membership term.

Mr D took out a loan from Novuna in his sole name to help pay for the Membership. As Mr D was the only party to the loan agreement, only he is eligible to refer this complaint to us – and for ease I will therefore only refer to him throughout, even when he and his wife may have been acting jointly.

In July 2024, Mr D – using a professional representative (the 'PR') – wrote to Novuna to raise a number of different concerns that, in summary, comprised a claim under Section 140A and Section 75 of the CCA as summarised above.

Novuna dealt with Mr D's concerns as a complaint, rejecting it on every ground. So the PR, on Mr D's behalf, referred the complaint to us. It was assessed by an Investigator who did not recommend that it be upheld, saying – in summary, that:

- The evidence didn't suggest that the Supplier was likely to have made factual statements that, having been untrue, enticed Mr D into purchasing the Membership. There was therefore no actionable representation, so it was fair for Novuna to have declined Mr D's claim under Section 75.

- No unfairness had arisen within Mr D's credit relationship with Novuna such that any compensation was warranted. While accepting that there may have been some shortcomings in how the Supplier sold the Membership to Mr D, these hadn't prejudiced his position or led him to act any differently than he otherwise would have done.

The PR disagreed with the Investigator's assessment and asked that an Ombudsman review the complaint, so it was passed to me to decide.

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.

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.

Mr D's Section 75 claim

The PR said that when selling the Membership to Mr D, the Supplier led him to believe that he:

- had purchased an investment which would appreciate in value,
- would have a share of a property and its value would increase during the term of the agreement, and
- would have access to the holiday apartments at any time all around the year.

Neither of the first two points strike me as misrepresentations, even had they been made by the Supplier. 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 it was suggested that the share in question would increase in value, that sounds like nothing more than an honestly held opinion.

As for the third point, the contractual paperwork was clear that no such right existed and I find it highly unlikely that the Supplier would've contradicted a key term of the agreement in such blatant fashion. And as there isn't any other evidence on file to support the suggestion that the Membership was misrepresented for that reason – notably Mr D does not refer to this in his own comments – I don't think it was.

While not explicitly raised as a concern within the PR's letter of complaint, I note that Mr D also says:

> "*Also and very importantly we were told that we could exit at any time should we really need to for example in the case of serious ill health or death.* [The Supplier] *would resolve it by selling our fractional rights to other customers*."

So I've also considered this. Mr D's comments are somewhat vague but ultimately it *was* possible for him to sell the Membership if he wished. However, the Supplier did not run a resale programme. Once again, the contractual documentation Mr D was given – and signed – was very clear in this respect. On the "Member's Declaration", Mr D signed his initials next to a number of key facts about the Membership, including one that said:

> "*4. We understand that [the Supplier] … does not and will not run any resale or rental programmes and will not repurchase Fractions … or act as an agent in the sale* …"

Again therefore, I find it improbable that the Supplier said something in such stark contradiction to this, and which would have been so demonstrably false if and when Mr D came to avail himself of the right he thought he had acquired.

So I don't think Novuna acted unreasonably or unfairly when declining Mr D's Section 75 claim.

The fairness of Mr D's credit relationship with Novuna

I should start by saying that I have noted the PR's point in response to our Investigator's view that under Section 140B(9) of the CCA, the burden of proof falls on Novuna to disprove the allegation that its relationship with Mr D was unfair. I agree that this is correct, placing a burden on lenders during the process of litigation. That does not mean, though, that Novuna – or I – should take a claim at face value. There remains an onus on Mr D to provide some evidence for the claim he's making, despite the overall burden of proof resting with Novuna[1]. Also, my role is to make findings on what I consider to be fair and reasonable in all the circumstances of any given complaint.

When initially raising the complaint, the PR raised a number of issues that it considered to have given rise to unfairness within Mr D's credit relationship with Novuna. All of these were considered and addressed by our Investigator, with the PR's rejection of his assessment based only on the question of whether the Supplier sold the Membership to Mr D as an investment and the impact this had on his decision to purchase it.

Given that I have reached the same conclusion as our Investigator for much the same reasons, and in keeping with our remit as a quick and informal dispute resolution service, I've focused this written summary of my findings on the points that the PR has raised in its appeal. But I should reassure the parties that I have reviewed the whole complaint afresh in finding, like our Investigator, that:

- Even if Novuna failed to do everything it should have when it agreed to lend to Mr D as alleged by the PR, I can't see that the loan was actually unaffordable for him.

- Even if the loan 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 that caused Mr D any harm. He knew, amongst other things, how much he was borrowing and repaying each month, and that he was borrowing from Novuna to pay for the Membership. And, as above, it doesn't look like the loan was unaffordable for him.

- It's possible that the Supplier didn't give Mr D sufficient information about the various charges he could have been subject to under the terms of the Membership. But I don't think this prejudiced Mr D's position, as I think he would still have chosen to purchase the Membership even if it had. I've also not seen that the ongoing costs of the Membership have been applied unfairly in practice.

- Accepting the possibility that one or more of the contract terms in Mr D's agreement with the Supplier could be classed as unfair under the relevant legislation, I've not seen that any such terms have been operated unfairly against him in practice, nor that any such terms led him to behave in a certain way to his detriment.

- While Novuna and the Supplier may not have properly disclosed to Mr D the commission arrangements between them, I don't think this caused any unfairness in the credit relationship between them. Given the amount of the commission, the impact of it on the cost of the credit Mr D needed for a timeshare he wanted doesn't strike me as disproportionate. So I think he would still have taken out the loan to fund his purchase even if he had known that the Supplier was going to be paid a flat rate of commission at that level. And I'm not persuaded that the Supplier – when acting as

[1] As was set out in the judgment in *Smith and another v Royal Bank of Scotland plc* [2023] UKSC 34 at paragraph 40.

credit broker – owed Mr D a fiduciary duty.

So I don't think that Mr D's credit relationship with Novuna was rendered unfair to him under Section 140A for any of the reasons above.

Turning to the matters raised in the PR's response to our Investigator's view, it maintains that the Supplier sold the Membership to Mr D as an investment in breach of the prohibition against selling timeshares in that way[2] – indeed much of its response is devoted to this allegation. I accept, as our Investigator did, that the Membership might have been marketed as an investment to Mr D. But regulatory breaches do not automatically create unfairness and such breaches and their consequences – if there are any – must be considered in the round, rather than in a narrow or technical way. So it isn't necessary for me to make a finding on this as it isn't determinative of the outcome of the complaint.

Rather I have to consider whether any such breach had a material impact on Mr D's decision to purchase the Membership. In other words, whether it led him to do so – and take out the loan with Novuna – when he would otherwise not have done. And having considered all the available evidence, I'm not persuaded that it did.

The PR primarily bases its claim in this respect upon the statement Mr D provided in his own words. And I've carefully considered what he said, but his comments don't persuade me that he would not have purchased the Membership were it not for a hope or expectation of a profit.

The PR highlights that, amongst other things, Mr D said the Supplier told him "*that there would be some form of return in 19 years at the end of the term*", which he considered to have been "*the most important misrepresentation made*". But, as set out above, this was not a misrepresentation – while the level of return was not (and could not be) known in advance, the property would be sold at the of the Membership term and such return as there was would then be passed on to Mr D in accordance with the size of his share.

More significantly here, Mr D does not talk about the possibility of a financial gain – rather "*some form of return*", which does not evidence that he was hoping or expecting to make a profit from the Membership. Similarly, I note that elsewhere Mr D described the prospect of making "*some return on the deal to recoup* ***at least some*** *of the original investment*" (my emphasis). It does not sound to me like Mr D was expecting, or hoping, to make a profit – or that, even if he did have some hope of this, that it was at such a level that it was the deciding factor in his choice to purchase the Membership.

I also find Mr D's comments with regard to cancellation of the Membership somewhat at odds with the significance of a financial gain in his decision-making. While I've not found that the Supplier misled him in this respect, Mr D describes it being very important that he had the option of exiting the Membership at any time. It is unclear to me how Mr D was expecting to realise a profit in such circumstances. And I note that when actually attempting to cancel the Membership due to unfortunate ill health in 2023, he made no request of the Supplier as to how to obtain any return on his investment.

Mr D evidently had an interest in the type of holidays offered by the Supplier, having already held a trial membership. Within his statement he recalls seeing the Supplier's resorts as "*very impressive indeed to be truthful*" prior to his purchase, as well as the apparent "*total flexibility in the way we holidayed going forwards*" and the "*further incentive*" of a year's complimentary platinum-level membership. I also note from the Supplier's notes that Mr D

[2] Regulation 14(3) of the Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010

held timeshare products with other providers too. So I think he was highly motivated by prospect of the holidays he could enjoy through the Membership.

None of this is to say that Mr D was not at all interested in a share of the net sale proceeds of a property. That wouldn't be surprising given the nature of the product at the centre of this complaint. But as Mr D himself doesn't persuade me that his purchase was motivated by that share 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 Mr D ultimately made. Rather, I think the evidence suggests he would have pressed ahead with the purchase whether or not there had been a breach of Regulation 14(3).

Taking all of this into account, I don't think Novuna was party to a credit relationship with Mr D that was unfair to him for the purposes of Section 140A of the CCA.

My final decision

For the reasons I've explained, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 23 March 2026.

Ben Jennings
Ombudsman