

## The complaint

Mr S's complaint is, in essence, that Mitsubishi HC Capital UK Plc (the "Lender") 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.

Mr S is represented in his complaint by a professional representative ("PR").

## What happened

I issued a provisional decision on this complaint on 3 December 2025 in which I set out the background to this matter and my provisional findings on it. A copy of my provisional decision is appended to, and forms part of, this final decision<sup>1</sup>, so it isn't necessary to go over all the details again. However, to summarise:

- Mr S entered an agreement (the "Purchase Agreement") to buy a timeshare (the "Fractional Club" membership) from a timeshare provider (the "Supplier") on 1 September 2016 (the "Time of Sale") for £11,990. This was financed by a loan from the Lender (the "Credit Agreement").
- Fractional Club membership was a kind of asset-backed timeshare which, as well as providing holiday rights, gave Mr S a share in the net sale proceeds of a property named on his Purchase Agreement (the "Allocated Property") when his membership term ends.
- Mr S complained to the Lender in 2018 that the timeshare had been mis-sold, seeking to hold the Lender liable under Section 75 of the CCA for alleged misrepresentations by the Supplier, and that the Supplier and Lender's acts and omissions had caused the credit relationship between Mr S and the Lender to be rendered unfair to him.

In my provisional decision I said I was minded to uphold the complaint. The full reasoning can be found in the appended document, but to summarise again:

- Having considered Mr S's testimony of his experiences with the Supplier, and the Supplier's sales and training materials relating to the Fractional Club product, I thought it more likely than not that the Supplier had marketed and/or sold the timeshare to Mr S as an investment, in breach of Regulation 14(3) of the Timeshare Regulations 2010.
- I thought it was also more likely than not that the Supplier's improper marketing of the product had had a material impact on Mr S's purchasing decision. I thought the prospect of the Fractional Club product being an investment (in the sense of something that came with a hope or expectation of a financial gain) had played a

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<sup>1</sup> Some typographical errors from the provisional decision have been corrected in the appended version.

significant part in his decision to buy the timeshare.

- The effect of this was to have rendered Mr S's credit relationship with the Lender under the Credit Agreement unfair to him within the meaning of Section 140A of the CCA, and meant it was fair and reasonable that the Lender provide fair compensation. What fair compensation looked like in Mr S's case was, essentially, the unwinding of the purchase as far as was practicable.

I asked the parties to the complaint to provide any further submissions they wanted me to consider, following my provisional decision.

PR told us that Mr S accepted the provisional decision. The Lender said that, having consulted with the Supplier, it had further evidence and arguments that it wanted me to consider. I think I could fairly summarise these as follows:

- It did not think Mr S's testimony was credible. It said his witness statement was inconsistent with, or contradicted, other evidence and his subsequent conduct.
- It thought it was unlikely that the Supplier had, at a meeting in December 2015 prior to the one in which the sale of the Fractional Club membership took place, marketed the Fractional Club membership to Mr S as an "exceptionally good investment" as he'd claimed. The purpose of that meeting had been to sell another kind of membership to Mr S (a "Trial" membership), and while Fractional Club membership may have been mentioned, it did not think that any specifics would have been.
  - Mr S's lack of recollection of any detail of the Trial membership meeting called into question the accuracy of him having remembered the Supplier describing Fractional Club membership as an "exceptionally good investment" at this meeting.
  - The Supplier's records showed Mr S hadn't walked away from the meeting as he'd claimed, and had in fact purchased a Trial membership, deciding to cancel it later due to concerns over his daughter's ability to fly.
- Mr S had not provided any specifics about what had happened at the Time of Sale itself, and the information he'd given about the events leading up to it was inaccurate.
  - In particular, Mr S had not bought the membership on the same day as the sales presentation. He had taken a couple of days to think about it before returning to the Supplier's sales team. So it's unlikely he felt "highly pressured" as he had said.
- The Supplier's notes from the Time of Sale recorded that Mr S had said the Fractional Club membership was *"exactly what [he] wanted to enable [him] to have quality holidays"*. This indicated that Mr S had purchased the product for holiday-related reasons, not because he thought it was an investment.
- Mr S had shown no sign of being concerned about his membership being cancelled, which was not the kind of behaviour that would be expected from someone who thought they had purchased an investment.
- Mr S had said the purchase was motivated partially by a desire to fund his daughter's university fees through investment returns, but this was inconsistent with another part of his statement where he had said he needed to re-mortgage his home to pay for her

university fees.

The case has now been returned to me to review once more.

### **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'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.

Because the Lender is the party which has disagreed with my provisional decision and provided further submissions for me to consider, I've addressed what it has said below.

#### The December 2015 Meeting

While the Lender says that I acknowledged in my provisional decision that the primary purpose of the December 2015 meeting had been to introduce the Trial membership to Mr S, I note that is not what I said in the provisional decision. I said the following:

*"I'm aware that it was the Supplier's general practice to present the Fractional Club product to prospective purchasers at UK-based sales events, but to sell a Trial membership, making it clear to prospective purchasers that they would have the opportunity to convert this into a full Fractional Club membership if they liked the product. So, in large part these UK sales events were the first stages of selling Fractional Club membership."*

To explain further – my understanding of the Supplier's strategy at meetings like the one Mr S attended in the UK, was to tell prospective purchasers about the benefits of Fractional Club membership and generate interest in a sale. Based on slides I've seen which I understand the Supplier showed at this kind of UK-based meeting, prospective purchasers would be told that it wasn't possible to buy Fractional Club membership on the day, and a Trial membership would be offered instead. The Supplier would then pitch the Fractional Club product again to the prospective purchaser while they were on holiday on their Trial membership or on a promotional holiday offered alongside the Trial membership (usually referred to as the "Prelude" holiday).

I think it's likely, given the above, that the Supplier would have spent a significant amount of time at the meeting Mr S attended in December 2015 promoting the benefits of the Fractional Club product as this was, in essence, the first stage of the sales process for that product. I think it's unlikely that the product would only have been "mentioned briefly". So I don't find Mr S's recollection that the Supplier told him Fractional Club membership would be an "exceptionally good investment" and that "...the resale value of the properties was far more than the initial purchase price meaning that we were bound to make a profit..." at all implausible in the circumstances. I would also say that Mr S's general recollection of the December 2015 meeting is not lacking in detail as the Lender has asserted.

The Lender says Mr S did purchase a Trial membership and then subsequently cancelled it, noting this is inconsistent with what he says happened – that he and his wife walked away from the meeting without buying anything. I acknowledged in my provisional decision that there was a difference between the Supplier and Mr S's account of events here, but I didn't think there was a fundamental inconsistency. I remain of that view.

Having now read the Supplier's notes relating to the meeting, which the Lender has provided in response to the provisional decision, I think it's not entirely clear what happened. It appears Mr S left without completing a purchase – the Supplier indicating he was a "Mailaway" as he had "already left for the evening". There was a phone call the following day in which his wife told the Supplier they didn't want to proceed at that time, apparently due to their daughter being under medical investigations, but that they might be interested in the future.

While this isn't quite the same as Mr S's account of events, I would not say it is radically different. The Supplier and Mr S seem to have had a different idea of the level of commitment shown on the day, but ultimately no payment was made and no purchase was completed.

#### The Time of Sale in August/September 2016

The Lender also questions Mr S's account of what happened in August and September 2016, which is when the sale of the Fractional Club membership took place. It says there is a lack of detail, and that what he did recall was wrong. While again there are some differences between the Supplier's notes and Mr S's recollections, I don't think these are fatal to his case.

One of the Lender's key points here is that the sale did not take place all in one go, and that Mr S had returned a couple of days later to see the sales team after the initial presentation, agreeing to buy on his return. In Mr S's witness statement, he describes a process whereby a named sales representative "befriended" him and his wife over the course of their trip, persuading him to buy Fractional Club membership by, among other things, assuring him it was a wise financial decision. Mr S doesn't say that the process took place all on one day, which seems consistent with the timings the Lender has referred to.

Another point made by the Lender is that Mr S purchased the Fractional Club product for holiday related reasons, not because he thought it was an investment. It cites Mr S's own testimony, the Supplier's notes, and Mr S's apparent lack of concern over cancellation/suspension of his membership, in support of its argument.

I acknowledged in the provisional decision that a part of Mr S's motivation for purchasing the Fractional Club product was a desire to use it for holidays. It would be surprising if that were not the case given the nature of the product. But that doesn't prevent him from having had other material motivations for making his purchase. The Supplier may not have remarked on them in its notes, but that doesn't mean they did not exist.

In his witness statement Mr S said:

*"...the main reason for purchasing the fractional ownership was to make an investment for the future which was helped [sic] towards retirement and our daughter's university fees and enjoy multiple holidays per year."*

I appreciate the Lender sees an inconsistency between this and a later comment Mr S makes about remortgaging his home to help pay his daughter's university fees, but these are not necessarily inconsistent statements. Some of Mr S's other comments suggest he

believed he could sell the Fractional Club membership at an earlier date than the end of the membership term, realising a financial gain sooner (his daughter was not due to start university for another two years). It's also possible the plan to remortgage came about after Mr S concluded the membership was not what he thought it was.

This leads me to another of the Lender's points, which is that Mr S didn't display any concern over his membership being cancelled or suspended, suggesting this attitude wasn't consistent with that of someone who thought they'd bought something that was an investment. I think the simple answer to this is that, by the time the Supplier had the conversations with Mr S the Lender is referring to, Mr S already believed the timeshare had been mis-sold, so any belief he had that the product was an investment had been dispelled by this point.

### Conclusions

I thank the Lender for its further submissions, but based on the evidence and circumstances of this case, I remain of the view that:

- During antecedent negotiations prior to the sale of the Fractional Club membership to Mr S, the Supplier breached Regulation 14(3) of the Timeshare Regulations 2010.
- Mr S's purchasing decision at the Time of Sale was materially affected by the Supplier's breaches of Regulation 14(3), leading him into the Purchase Agreement and Credit Agreement and rendering the credit relationship between Mr S and the Lender unfair to him within the meaning of Section 140A of the CCA.

### Fair Compensation

Note: the following paragraphs have been copied from the appended provisional decision.

Having found that Mr S would not have agreed to purchase Fractional Club membership at the Time of Sale were it not for the breach of Regulation 14(3) of the Timeshare Regulations by the Supplier (as deemed agent for the Lender), and the impact of that breach meaning that, in my view, the relationship between the Lender and the Consumer was unfair under section 140A of the CCA, I think it would be fair and reasonable to put him back in the position he would have been in had he not purchased the Fractional Club membership (i.e., not entered into the Purchase Agreement), and therefore not entered into the Credit Agreement, provided Mr S and any joint purchaser agree to assign to the Lender their Fractional Points or hold them on trust for the Lender if that can be achieved.

Here's what I think needs to be done to compensate Mr S with that being the case – whether or not a court would award such compensation:

- (1) The Lender should refund Mr S's repayments to it under the Credit Agreement, including any sums paid to settle the debt, and cancel any outstanding balance if there is one.
- (2) In addition to (1), the Lender should also refund the annual management charges Mr S paid as a result of Fractional Club membership.
- (3) The Lender can deduct:
  - i. The value of any promotional giveaways that Mr S used or took advantage of; and
  - ii. The market value of the holidays\* Mr S took using his Fractional Points.(I'll refer to the output of steps 1 to 3 as the 'Net Repayments' hereafter)
- (4) Simple interest\*\* at 8% per annum should be added to each of the Net Repayments from the date each one was made until the date the Lender settles this complaint.
- (5) The Lender should remove any adverse information recorded on Mr S's credit file in connection with the Credit Agreement reported within six years of this decision.
- (6) If Mr S's Fractional Club membership is still in place at the time of this decision, as long as he and any joint purchaser agree to hold the benefit of their interest in the Allocated Property for the Lender (or assign it to the Lender if that can be achieved), the Lender must indemnify them against all ongoing liabilities as a result of their Fractional Club membership.

\*I recognise that it can be difficult to reasonably and reliably determine the market value of holidays when they were taken a long time ago and might not have been available on the open market. So, if it isn't practical or possible to determine the market value of the holidays Mr S took using his Fractional Points, deducting the relevant annual management charges (that correspond to the year(s) in which one or more holidays were taken) payable under the Purchase Agreement seems to me to be a practical and proportionate alternative in order to reasonably reflect his usage.

I'm aware this may be something of an irrelevance as my understanding is that Mr S never used the membership, but I've included these provisions in case I'm mistaken about that.

\*\*HM Revenue & Customs may require the Lender to take off tax from this interest. If that's the case, the Lender must give the consumer a certificate showing how much tax it's taken off if they ask for one.

### **My final decision**

For the reasons explained above, and in the appended provisional decision, I uphold this complaint and direct Hitachi HC Capital UK Plc to take the actions set out in the "Fair Compensation" section of this final decision.

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

A handwritten signature in blue ink, appearing to read 'Will Culley', with a horizontal line underneath.

Will Culley  
**Ombudsman**

## COPY OF PROVISIONAL DECISION

I've considered the relevant information about this complaint.

Having done so, I've arrived at a different set of conclusions to our Investigator, and I am issuing this provisional decision to give the parties to the complaint an opportunity to provide further submissions.

The deadline for both parties to provide any further comments or evidence for me to consider is **17 December 2025**. Unless the information changes my mind, my final decision is likely to be along the following lines.

If Mitsubishi HC Capital UK Plc trading as Hitachi Personal Finance accepts my provisional decision, it should let me know. If Mr S also accepts, I may arrange for the complaint to be closed as resolved at this stage without a final decision.

### The complaint

Mr S's complaint is, in essence, that Mitsubishi HC Capital UK Plc (the 'Lender') 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.

### What happened

Mr S purchased membership of a timeshare (the 'Fractional Club') from a timeshare provider (the 'Supplier') on 1 September 2016 (the 'Time of Sale'). He entered into an agreement with the Supplier to buy 1,040 fractional points at a cost of £11,990 (the 'Purchase Agreement'). Under the Purchase Agreement Mr S was credited with points every other year (a 'bi-annual' membership) which could be used to book holiday accommodation within the Supplier's portfolio.

Fractional Club membership was also asset backed – which meant it gave Mr S more than just holiday rights. It also included a share in the net sale proceeds of a property named on his Purchase Agreement (the 'Allocated Property') after his membership term ends.

Mr S paid for his Fractional Club membership by taking finance of £11,990 from the Lender in his own name (the 'Credit Agreement').

Mr S – using a professional representative ('PR') – wrote to the Lender in or around April 2018 (the 'Letter of Complaint') to complain about:

1. Misrepresentations by the Supplier at the Time of Sale giving him a claim against the Lender under Section 75 of the CCA, which the Lender failed to accept and pay.
2. The Lender being party to an unfair credit relationship under the Credit Agreement and related Purchase Agreement for the purposes of Section 140A of the CCA.
3. The decision to lend being irresponsible because the Lender did not carry out the right creditworthiness assessment.

#### (1) Section 75 of the CCA: the Supplier's misrepresentations at the Time of Sale

Mr S says that the Supplier made a number of pre-contractual misrepresentations at the Time of Sale – namely that the Supplier:

1. told him that Fractional Club membership had a guaranteed end date when that was not true.
2. told him that he was buying an interest in a specific piece of “real property” when that was not true.
3. told him that Fractional Club membership was an “investment” when that was not true because it is worthless.
4. told him that the Supplier’s holiday resorts were exclusive to its members and that he would have priority booking, when that was not true.

Mr S says that he has a claim against the Supplier in respect of one or more of the misrepresentations set out above, and therefore, under Section 75 of the CCA, he has a like claim against the Lender, who, with the Supplier, is jointly and severally liable to Mr S.

(2) Section 140A of the CCA: the Lender’s participation in an unfair credit relationship

The Letter of Complaint set out several matters which I’ve interpreted as reasons why Mr S considers the credit relationship between him and the Lender was unfair to him under Section 140A of the CCA. In summary, they include the following:

1. Fractional Club membership was marketed and sold to him as an investment in breach of regulation 14(3) of the Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010 (the ‘Timeshare Regulations’).
2. There were terms within the Purchase Agreement and related agreements that were unfair under the Consumer Rights Act 2015.
3. He was pressured into purchasing Fractional Club membership by the Supplier.
4. The Supplier’s sales presentation at the Time of Sale included misleading actions and/or misleading omissions under the Consumer Protection from Unfair Trading Regulations 2008 (the ‘CPUT Regulations’) as well as a prohibited practice under Schedule 1 of those Regulations.
5. The decision to lend was irresponsible because the Lender didn’t carry out the right creditworthiness assessment.
6. The Supplier failed to provide sufficient information in relation to the Fractional Club’s ongoing costs.

The Lender dealt with Mr S’s concerns as a complaint and rejected it on every ground.

Mr S then referred the complaint to the Financial Ombudsman Service. It was assessed by an Investigator who, having considered the information on file, didn’t think it should be upheld.

PR, on behalf of Mr S, disagreed with the Investigator's assessment and asked for an Ombudsman's decision.

PR made a number of points in a letter in which it expressed its disagreement with our Investigator's assessment. I think it would be fair to summarise the overarching themes of its disagreement as follows:

- It was the responsibility of the Lender to show that the credit relationship was fair, rather than for Mr S to prove that it was unfair.
- There had been numerous breaches of the Timeshare Regulations by the Supplier, including failing to tell Mr S in advance that he was being invited to meetings for the purpose of selling him a timeshare, failing to provide Mr S with the relevant documents during the meetings, and selling the timeshare as an investment. In relation to the last point, PR considered it was very clear from Mr S's recollections that the Supplier had sold the membership to him as an investment.
- The Supplier had not simply made some mistakes, as our Investigator had suggested, but had exhibited a fundamental disregard for the laws and regulations in place to protect consumers.

The case has now been 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 provisionally 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. And having done that, I currently think that this complaint should be upheld because the Supplier breached Regulation 14(3) of the Timeshare Regulations by marketing and/or selling Fractional Club membership to Mr S as an investment, which, in the circumstances of this complaint, rendered the credit relationship between him and the Lender unfair to him for the purposes of Section 140A of the CCA.

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, while I recognise that there are a number of aspects to Mr S's complaint, it isn't necessary to make formal findings on all of them. This includes the allegations that the Fractional Club product was misrepresented, that there were unfair terms in the Purchase Agreement, or that the Lender lent to Mr S irresponsibly. And that is because, even if those aspects of the complaint ought to succeed, the redress I'm currently proposing puts Mr S in the same or a better position than he would have been in, had any of those other grounds of complaint been successful.

## **Section 140A of the CCA: did the Lender participate in an unfair credit relationship?**

Having considered the entirety of the credit relationship between Mr S and the Lender along with all of the circumstances of the complaint, I 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 Supplier's sales and marketing practices at the Time of Sale – which includes training material that I think is likely to be relevant to the sale; and
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.

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

## **The Supplier's breach of Regulation 14(3) of the Timeshare Regulations**

The Lender does not dispute, and I am satisfied, that Mr S'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 Mr S says that the Supplier did exactly that at the Time of Sale. In a witness statement dating to October 2017, Mr S recounted his experiences with the Supplier, starting with him winning a free holiday which required him to first go to a meeting in Birmingham in December 2015. He says this meeting turned out to be a high-pressure sale for the Fractional Club product. Ultimately, Mr S says didn't buy anything at this meeting,<sup>2</sup> citing financial concerns. But he says the Supplier emphasised during this initial meeting that the Fractional Club product was "...*buying an interest in property and investing for our future*", and that "*the resale value of the properties was far more than the initial purchase price meaning that we were bound to make a profit...*", and that the product was "*an exceptionally good investment*".

Following the meeting, Mr S says he received a phone call asking him where he wanted to book his free holiday, and he ended up holidaying on one of the Supplier's resorts in late August 2016. He says a particular sales representative of the Supplier befriended him during the holiday and treated him and his wife like VIPs, and persuaded them that joining the Fractional Club would be a wise financial decision. Mr S says that, during the sales process that took place, the Supplier again emphasised that they were buying an interest in property, and that the sale price of the membership would more than cover the amount of money spent on interest on the Credit Agreement.

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<sup>2</sup> Mr S's and the Supplier's accounts of this differ. Mr S says he and his wife walked away without purchasing anything, while the Supplier says they signed up for a Trial membership but didn't complete the purchase.

Mr S alleges, therefore, that the Supplier breached Regulation 14(3) at the Time of Sale because:

- (1) There were two aspects to his Fractional Club membership: holiday rights and a profit on the sale of the Allocated Property.
- (2) He was told by the Supplier that he would get his money back or more during the sale of Fractional Club membership.

The term “investment” is not defined in the Timeshare Regulations. In *Shawbrook & BPF v FOS*, the parties agreed that, 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*” at [56]. I will use the same definition.

Mr S’s share in the Allocated Property clearly constituted an investment as it offered him the prospect of a financial return – whether or not, like all investments, that was more than what he first put into it. But 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 Mr S 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 him as an investment, i.e. told him or led him to believe that Fractional Club membership offered him the prospect of a financial gain (i.e., a profit) given the facts and circumstances of *this* complaint.

There is evidence in this complaint that the Supplier made efforts to avoid specifically describing membership of the Fractional Club as an ‘investment’ or quantifying to prospective purchasers, such as Mr S, 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. There were, for instance, disclaimers in the contemporaneous paperwork that state that Fractional Club membership was for the primary purpose of holidays and no guarantees could be given as to any future resale values. On the other hand, one of the Supplier’s disclaimers (contained within the Information Statement – which was part of the Purchase Agreement) stated that the Supplier’s representatives were not licenced investment advisors and that any information they gave to Mr S was from their own personal experience as investors. This disclaimer seems to anticipate that the Supplier’s sales representatives would discuss the Fractional Club product in the context of investing, so I think overall the Supplier’s disclaimers would have given a consumer like Mr S mixed messages.

In any case, weighing up what happened in practice is, in my view, rarely as simple as looking at the contemporaneous paperwork.

So, I have considered:

- (1) whether it is more likely than not that the Supplier, at the Time of Sale, sold or marketed membership of the Fractional Club as an investment, i.e. told Mr S or led him to believe during the marketing and/or sales process that membership of the Fractional Club was an investment and/or offered him the prospect of a financial gain (i.e., a profit); and, in turn

(2) whether the Supplier's actions constitute a breach of Regulation 14(3).

And for reasons I'll now come on to, given the facts and circumstances of this complaint, I think the answer to both of these questions is 'yes'.

### **How the Supplier marketed and sold the Fractional Club membership**

During the course of the Financial Ombudsman Service's work on complaints about the sale of timeshares, the Supplier has provided training material used to prepare its sales representatives – including:

1. a document called the 2013/2014 Sales Induction Training (the '2013/2014 Induction Training');
2. screenshots of a Electronic Sales Aid (the 'ESA'); and
3. a document called the "FPOC2 Fly Buy Induction Training Manual" (the 'Fractional Club Training Manual')

Neither the 2013/2014 Induction Training nor the ESA I've seen included notes of any kind. However, the Fractional Club Training Manual includes very similar slides to those used in the ESA. And according to the Supplier, the Fractional Club Training Manual (or something similar) was used by it to train its sales representatives at the Time of Sale. So, it seems to me that the Training Manual is reasonably indicative of:

- (1) the training the Supplier's sales representatives would have got before selling Fractional Club membership; and
- (2) how the sales representatives would have framed the Supplier's multimedia presentation (i.e., the ESA) during the sale of Fractional Club membership to prospective members – including Mr S.

The "Game Plan" on page 23 of the Fractional Club Training Manual indicates that, of the first 12 to 25 minutes, most of that time would have been spent taking prospective members through a comparison between "renting" and "owning" along with how membership of the Fractional Club worked and what it was intended to achieve.

Page 32 of the Fractional Club Training Manual covered how the Supplier's sales representatives should address that comparison in more detail – indicating that they would have tried to demonstrate that there were financial advantages to owning property, over 10 years for example, rather than renting:

- Re-visit the idea of renting a house and talk them through the example of renting a home for £500 highlighting the fact of no return
- Refer to their decision to purchase a property as it made more financial sense to own than rent because, not only are they are building equity in their property, they can also continue to enjoy living in their home once it is paid for
- Ask: "if it cost a little more to own rather than rent would they be happy to pay the extra to own?" (*Increase amount of owning and continue to do this for a couple of times until they don't agree.*)

**CLOSE:** So what you are telling me is that, as long as it's comfortably affordable, you would always choose to own rather than rent, is that correct?

**LINK:** Now let me show you the relevance this has when it comes to your holidays because what you are currently doing is ...

**CLOSE:**

Indeed, one of the advantages of ownership referred to in the slide above is that it makes more financial sense than renting because owners *"are building equity in their property"*. And as an owner's equity in their property is built over time as the value of the asset increases relative to the size of the mortgage secured against it, one of the advantages of ownership over renting was portrayed in terms that played on the opportunity ownership gave prospective members of the Fractional Club to accumulate wealth over time.

I acknowledge that the slides don't include express reference to the "investment" benefit of ownership. But the description alludes to much the same concept. It was simply rephrased in the language of "building equity". And with that being the case, it seems to me that the approach to marketing Fractional Club membership was to strongly imply that 'owning' fractional points was a way of building wealth over time, similar to home ownership.

Page 33 of the Fractional Club Training Manual then moved the Supplier's sales representatives onto a cost comparison between "renting" holidays and "owning" them. Sales representatives were told to ask prospective members to tell them what they'd own if they just paid for holidays every year in contrast to spending the same amount of money to "own" their holidays – thus laying the groundwork necessary to demonstrating the advantages of Fractional Club membership:

- You are currently spending £xxxx on your holidays each year... (taken from survey)
- Confirm exactly what clients get for that money in terms of quality, people travelling and weeks
- Confirm the client will holiday for the next 10 years
- Explain total cost, with no inflation over a ten year period and ask what they own at the end of that period
- Compare spending the same money to own your holidays with better benefits, so that at the end of the ten years they would have received better value

✍️ **CLOSE:** So, looking at the two options which way makes more sense, to own or rent your holidays? (Get the answer "Owning") This is why so many people choose to holiday with ~~Clubhouse~~.

✍️ **LINK:** Before I show you how the product works, I am just going to tell you how ~~Clubhouse~~ started and where we are today.

**CLOSE:**

With the groundwork laid, sales representatives were then taken to the part of the ESA that explained how Fractional Club membership worked. And, on pages 41 and 42 of the Fractional Club Training Manual, this is what sales representatives were told to say to prospective members when explaining what a 'fraction' was:

*"FPOC = small piece of [...] World apartment which equals **ownership of bricks and mortar***

*[...]*

*Major benefit is the property is sold in nineteen years (**optimum period to cover peaks and troughs in the market**) when sold you will get your share of the proceeds of the sale*

SUMMARISE LAST SLIDE:

*FPOC equals a passport to fantastic holidays for 19 years **with a return at the end of that period.** When was the last time you went on holiday and **got some money back?** How would you feel if there was an opportunity of doing that?*

[...]

*LINK: Many people join us every day and one of the main questions they have is **“how can we be sure our interests are taken care of for the full 19 years?”** As it is very important you understand how we ensure that, I am going to ask Paul to come over and explain this in more details for you.*

[...]

*“Handover: (Manager’s name) John and Mary love FPOC and have told me the best for them is.....**Would you mind explaining to them how their interest will be protected over the next 19 year[s]?”***

(My emphasis added)

The Fractional Club Training Manual doesn’t give any immediate context to what the manager would have said to prospective members in answer to the question posed by the sales representative at the handover. Page 43 of the manual has the word “script” on it but otherwise it’s blank. However, after the Manual covered areas like the types of holiday and accommodation on offer to members, it went onto “resort management”, at which point page 61 said this:

*“T/O will explain slides emphasising that they only pay a fraction of maintaining the entire property. It also ensures property is kept in peak condition to maximise the return in 19 years[.] time.*

[...]

*CLOSE: I am sure you will agree with us that **this management fee is an extremely important part of the equation as it ensures the property is maintained in pristine condition so at the end of the 19 year period, when the property is sold, you can get the maximum return.** So I take it, like our owners, there is nothing about the management fee that would stop you taking you holidays with us in the future?...”*

(My emphasis added)

By page 68 of the Fractional Training Manual, sales representatives were moved on to the holiday budget of prospective members. Included in the ESA were a number of holiday comparisons. It isn’t entirely clear to me what the relevant parts of the ESA were designed to show prospective members. But it seems that prospective members would have been shown that there was the prospect of a “return”.

For example, on page 69 of the Fractional Club Induction Training Manual, it included the following screenshots of the ESA along with the context the Supplier’s sales representatives were told to give to them:



[...]

*“We also agreed that you would get nothing back from the travel agent at the end of this holiday period. Remember with your fraction at the end of the 19 year period, you will get some money back from the sale, so even if you only got a small part of your initial outlay, say £5,000 it would still be more than you would get renting your holidays from a travel agent, wouldn't it?”*

I acknowledge that the slides above set out a “return” that is less than the total cost of the holidays and the “initial outlay”. But that was just an example and, given the way in which it was positioned in the Training Manual, the language did leave open the possibility that the

return could be equal to if not more than the initial outlay. Furthermore, the slides above represent Fractional Club membership as:

- (1) The right to receive holiday rights for 19 years whose market value significantly exceeds the costs to a Fractional Club member; plus
- (2) A significant financial return at the end of the membership term.

And to consumers (like Mr S) who were looking to buy holidays anyway, the comparison the slides make between the costs of Fractional Club membership and the higher cost of buying holidays on the open market was likely to have suggested to them that the financial return was in fact an overall profit.

I also acknowledge that there was no comparison between the expected level of financial return and the purchase price of Fractional Club membership. However, if I were to only concern myself with express efforts to quantify to Mr S the financial value of the proprietary interest he was offered, I think that would involve taking too narrow a view of the prohibition against marketing and selling timeshares as an investment in Regulation 14(3).

When the Government consulted on the implementation of the Timeshare Regulations, it discussed what marketing or selling a timeshare as an investment might look like – saying that *'[a] trader must not market or sell a timeshare or [long-term] holiday product as an investment. For example, there should not be any inference that the cost of the contract would be recoupable at a profit in the future (see regulation 14(3)).'*<sup>3</sup> And in my view that must have been correct because it would defeat the consumer-protection purpose of Regulation 14(3) if the concepts of marketing and selling a timeshare as an investment were interpreted too restrictively.

So, if a supplier *implied* to consumers that future financial returns (in the sense of possible profits) from a timeshare were a good reason to purchase it, I think its conduct was likely to have fallen foul of the prohibition against marketing or selling the product as an investment.

Indeed, if I'm wrong about that, I find it difficult to explain why, in paragraphs 77 and 78 followed by 99 and 100 of *Shawbrook & BPF v FOS* when, Mrs Justice Collins Rice said the following:

***"[...] I endorse the observation made by Mr Jaffey KC, Counsel for BPF, that, whatever the position in principle, it is apparently a major challenge in practice for timeshare companies to market fractional ownership timeshares consistently with Reg.14(3). [...] Getting the governance principles and paperwork right may not be quite enough.***

***The problem comes back to the difficulty in articulating the intrinsic benefit of fractional ownership over any other timeshare from an individual consumer perspective. [...] If it is not a prospect of getting more back from the ultimate proceeds of sale than the fractional ownership cost in the first place, what exactly is the benefit? [...] What the interim use or value to a consumer is of a prospective share in the proceeds of a postponed sale of a property owned by a timeshare company – one they have no right to stay in meanwhile – is persistently elusive."***

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<sup>3</sup> The Department for Business Innovation & Skills "Consultation on Implementation of EU Directive 2008/122/EC on Timeshare, Long-Term Holiday Products, Resale and Exchange Contracts (July 2010)".  
<https://assets.publishing.service.gov.uk/media/5a78d54ded915d0422065b2a/10-500-consultation-directive-timeshare-holiday.pdf>

*“[...] although the point is more latent in the first decision than in the second, it is clear that both ombudsmen viewed fractional ownership timeshares – simply by virtue of the interest they confer in the sale proceeds of real property unattached to any right to stay in it, and the prospect they undoubtedly hold out of at least 'something back' – as products which are inherently dangerous for consumers. **It is a concern that, however scrupulously a fractional ownership timeshare is marketed otherwise, its offer of a 'bonus' property right and a 'return' of (if not on) cash at the end of a moderate term of years may well taste and feel like an investment to consumers who are putting money, loyalty, hope and desire into their purchase anyway.** Any timeshare contract is a promise, or at the very least a prospect, of long-term delight. [...] A timeshare-plus contract suggests a prospect of happiness-plus. And a timeshare plus 'property rights' and 'money back' suggests adding the gold of solidity and lasting value to the silver of transient holiday joy.”*

I think the Supplier's sales representatives were encouraged to make prospective Fractional Club members consider the advantages of owning something and view membership as an opportunity to build equity in an allocated property rather than simply paying for holidays in the usual way. That was likely to have been reinforced throughout the Supplier's sales presentations by the use of phrases such as “bricks and mortar” and notions that prospective members were building equity in something tangible that could make them some money at the end. And as the Fractional Club Training Manual suggests that much would have been made of the possibility of prospective members maximising their returns (e.g., by pointing out that one of the major benefits of a 19-year membership term was that it was an optimum period of time to see out peaks and troughs in the market), I think the language used during the Supplier's sales presentations was likely to have been consistent with the idea that Fractional Club membership was an investment.

Overall, therefore, as the slides I've referred to above seem to me to reflect the training the Supplier's sales representatives would have got before selling Fractional Club membership and, in turn, how they would have probably framed the sale of the Fractional Club to prospective members, they indicate that the Supplier's sales representative was likely to have led Mr S to believe that membership of the Fractional Club was an investment that may lead to a financial gain (i.e., a profit) in the future. And with that being the case, I don't find him either implausible or hard to believe when he says he was told that he was buying an interest in property and that he would get more back from the sale of the Fractional Club membership than he had put in. On the contrary, in the absence of evidence to persuade me otherwise, I think that's likely to be what Mr S was led by the Supplier to believe at the relevant time. And for that reason, I think the Supplier breached Regulation 14(3) of the Timeshare Regulations.

I'll note here that, based on Mr S's testimony, the Supplier gave much more emphasis to the “investment” aspects of the Fractional Club product during the December 2015 meeting at which no purchase was ultimately completed. I'm aware that it was the Supplier's general practice to present the Fractional Club product to prospective purchasers at UK-based sales events, but to sell a Trial membership, making it clear to prospective purchasers that they would have the opportunity to convert this into a full Fractional Club membership if they liked the product. So, in large part these UK sales events were the first stages of selling Fractional Club membership, and so I think it's possible that the Supplier's representations at that time could still be considered “antecedent negotiations” for the purpose of the purchase made in September 2016, and be considered when examining the fairness of the Credit Agreement. But even if that's not correct, it appears the Supplier reinforced key messages from that earlier meeting and likely breached Regulation 14(3) during the August/September 2016 sales process as well.

**Was the credit relationship between the Lender and the Consumer rendered unfair?**

Having found that the Supplier breached Regulation 14(3) of the Timeshare Regulations at the Time of Sale, I now need to consider what impact that breach had on the fairness of the credit relationship between Mr S and the Lender under the Credit Agreement and related Purchase Agreement.

As the Supreme Court's judgment in *Plevin* makes clear, it does not automatically follow that regulatory breaches create unfairness for the purposes of Section 140A. Such breaches and their consequences (if there are any) must be considered in the round, rather than in a narrow or technical way.

It also it seems to me in light of *Carney* and *Kerrigan* that, if I am to conclude that a breach of Regulation 14(3) led to a credit relationship between Mr S and the Lender that was unfair to him and warranted relief as a result, whether the Supplier's breach of Regulation 14(3) led him to enter into the Purchase Agreement and the Credit Agreement is an important consideration.

Mr S says in his witness statement, when considering why he decided to go ahead with purchasing the Fractional Club membership:

*"...the main reason for purchasing the fractional ownership was to make an investment for the future which was helped [sic] towards retirement and our daughter's university fees and enjoy multiple holidays per year."*

So it seems to me that one of the main reasons for Mr S's purchase was the prospect of the product being an investment which he could use to fund things such as his retirement. Clearly he had other reasons as well, and indeed he emphasises later in his statement that one of the things which was particularly important to him was using the membership for five holidays per year. But based on his testimony, I think the prospect of a financial gain from Fractional Club membership was an important and motivating factor when he decided to go ahead with his purchase. And as Mr S says (plausibly in my view) that Fractional Club membership was marketed and sold to him at the Time of Sale as something that offered him more than just holiday rights, on the balance of probabilities, I think his purchase was motivated by his share in the Allocated Property and the possibility of a profit as that share was one of the defining features of membership that marked it apart from more traditional types of timeshare.<sup>4</sup> And with that being the case, I think the Supplier's breach of Regulation 14(3) was material to the decision he ultimately made.

Mr S has not said or suggested, for example, that he would have pressed ahead with the purchase in question had the Supplier not led him to believe that Fractional Club membership was an appealing investment opportunity. And as he faced the prospect of borrowing and repaying a substantial sum of money while subjecting himself to long-term financial commitments, had he not been encouraged by the prospect of a financial gain from membership of the Fractional Club, I'm not persuaded that he would have pressed ahead with his purchase regardless.

## **Conclusion**

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Given the facts and circumstances of this complaint, I think the Lender participated in and perpetuated an unfair credit relationship with Mr S under the Credit Agreement and related Purchase Agreement for the purposes of Section 140A. And with that being the case, taking everything into account, I think it is fair and reasonable that I uphold this complaint.

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<sup>4</sup> Mr S mentions several times in his witness statement that the Supplier was keen to emphasise the difference between Fractional Club membership and "timeshares", one of which was the fact it was "an exceptionally good investment".

## Fair Compensation

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Having found that Mr S would not have agreed to purchase Fractional Club membership at the Time of Sale were it not for the breach of Regulation 14(3) of the Timeshare Regulations by the Supplier (as deemed agent for the Lender), and the impact of that breach meaning that, in my view, the relationship between the Lender and the Consumer was unfair under section 140A of the CCA, I think it would be fair and reasonable to put him back in the position he would have been in had he not purchased the Fractional Club membership (i.e., not entered into the Purchase Agreement), and therefore not entered into the Credit Agreement, provided Mr S and any joint purchaser agree to assign to the Lender their Fractional Points or hold them on trust for the Lender if that can be achieved.

Here's what I think needs to be done to compensate Mr S with that being the case – whether or not a court would award such compensation:

- (7) The Lender should refund Mr S's repayments to it under the Credit Agreement, including any sums paid to settle the debt, and cancel any outstanding balance if there is one.
- (8) In addition to (1), the Lender should also refund the annual management charges Mr S paid as a result of Fractional Club membership.
- (9) The Lender can deduct:
  - iii. The value of any promotional giveaways that Mr S used or took advantage of; and
  - iv. The market value of the holidays\* Mr S took using his Fractional Points.(I'll refer to the output of steps 1 to 3 as the 'Net Repayments' hereafter)
- (10) Simple interest\*\* at 8% per annum should be added to each of the Net Repayments from the date each one was made until the date the Lender settles this complaint.
- (11) The Lender should remove any adverse information recorded on Mr S's credit file in connection with the Credit Agreement reported within six years of this decision.
- (12) If Mr S's Fractional Club membership is still in place at the time of this decision, as long as he and any joint purchaser agree to hold the benefit of their interest in the Allocated Property for the Lender (or assign it to the Lender if that can be achieved), the Lender must indemnify them against all ongoing liabilities as a result of their Fractional Club membership.

\*I recognise that it can be difficult to reasonably and reliably determine the market value of holidays when they were taken a long time ago and might not have been available on the open market. So, if it isn't practical or possible to determine the market value of the holidays Mr S took using his Fractional Points, deducting the relevant annual management charges (that correspond to the year(s) in which one or more holidays were taken) payable under the Purchase Agreement seems to me to be a practical and proportionate alternative in order to reasonably reflect his usage.

I'm aware this may be something of an irrelevance as my understanding is that Mr S never used the membership, but I've included these provisions in case I'm mistaken about that.

\*\*HM Revenue & Customs may require the Lender to take off tax from this interest. If that's the case, the Lender must give the consumer a certificate showing how much tax it's taken off if they ask for one.

### **My provisional decision**

For the reasons explained above, I'm currently minded to uphold this complaint and direct Mitsubishi HC Capital UK Plc to take the actions set out in the "Fair Compensation" section of this provisional decision.

Will Culley  
**Ombudsman**