

## **The complaint**

Mr J'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 him under Section 140A of the Consumer Credit Act 1974 (as amended) (the 'CCA') and (2) deciding against paying him a claim under Section 75 of the CCA.

## **What happened**

The product at the centre of this complaint is Mr J's purchase of a membership of a timeshare that I'll call the 'Fractional Club' – which he bought in April 2018 (the 'Time of Sale'). He entered into an agreement with the Supplier to buy 1300 fractional points at a cost of £17,433 (the 'Purchase Agreement').

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

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

Mr J, using a professional representative ('the PR') wrote to the Lender on in July 2024 (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 Mr J's concerns and rejected 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.

Mr J disagreed with the Investigator's assessment and asked for an Ombudsman's decision – which is why it was passed to me.

## **The legal and regulatory context**

In considering what is fair and reasonable in all the circumstances of the complaint, I am required under DISP 3.6.4R to take into account: relevant (i) law and regulations; (ii) regulators' rules, guidance and standards; and (iii) codes of practice; and (where appropriate), what I consider to have been good industry practice at the relevant time.

The legal and regulatory context that I think is relevant to this complaint is, in many ways, no different to that shared in several hundred published ombudsman decisions on very similar complaints – which can be found on the Financial Ombudsman Service's website. And with that being the case, it is not necessary to set out that context in detail here. But I would add that the following regulatory rules/guidance are also relevant:

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

Below are the most relevant provisions and/or guidance as they were at the relevant time:

- CONC 3.7.3 [R]
- CONC 4.5.3 [R]
- CONC 4.5.2 [G]

The FCA's Principles

The rules on consumer credit sit alongside the wider obligations of firms, such as the Principles for Businesses ('PRIN'). Set out below are those that are most relevant to this complaint:

- Principle 6
- Principle 7
- Principle 8

**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.

And having done that, I have decided that this complaint should not 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 Time of Sale because Mr J was told that he would own a share in a property that would increase in value during the membership term when that was not true.

However this does not strike me as a misrepresentation even if such representations had been made by the Supplier (which I make no formal finding on). Telling prospective members that they were investing their money because they were buying a fraction or share of one of the Supplier's properties was not untrue. And even if the Supplier's sales representatives went further and suggested that the share in question would increase in value, perhaps considerably so, that sounds like nothing more than an honestly held opinion, as there isn't enough evidence to persuade me that the relevant sales representative(s) said something that, while an opinion, amounted to a statement of fact that they did not hold or could not have reasonably held.

So, while I recognise that Mr J has 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.

Mr J also says that the Supplier breached the Purchase Agreement because it went into liquidation. I can see that certain parts of the Supplier's business were restructured. And I can understand why he is alleging that there was a breach of the Purchase Agreement as a result. However Mr J has not said, suggested or provided evidence to demonstrate that he is no longer:

1. A Member of the Fractional Club;
2. able to use the Fractional Club membership to holiday in the same way he could initially; and
3. entitled to a share in the net sales proceeds of the Allocated Property when the Fractional Club membership ends.

Overall, therefore, from the evidence I have seen to date, I do not think the Lender is liable to pay Mr J any compensation for a breach of contract by the Supplier for this reason.

Mr J has said he wasn't able to holiday when he wanted to. In essence he says the Supplier didn't live up to its side of the agreement, otherwise known as breach of contract. Yet, like any holiday accommodation, availability was not unlimited – given the higher demand at peak times, like school holidays, for instance. Some of the sales paperwork likely to have been signed by Mr J states that the availability of holidays was/is subject to demand. I accept that he may not have been able to take certain holidays. But I've also seen that Mr J regularly did take holidays with the supplier. Indeed the Supplier has provided evidence to show that whenever Mr J contacted it to book a holiday he did so. Accordingly I have not seen enough to persuade me that the Supplier had breached the terms of the Purchase Agreement. So, from the evidence I have seen, I do not think Mr J has lost out due the Lender not agreeing to his S75 claim for either breach of contract or misrepresentation.

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

I've already explained why I'm not persuaded that Fractional Club membership was actionably misrepresented by the Supplier at the Time of Sale. But there are other aspects of the sales process that, being the subject of dissatisfaction, I must explore with Section 140A in mind if I'm to consider this complaint in full – which is what I've done next.

Having considered the entirety of the credit relationship between Mr J 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. The commission arrangements between the Lender and the Supplier at the Time of Sale and the disclosure of those arrangements;
4. Evidence provided by both parties on what was likely to have been said and/or done at the Time of Sale;
5. The inherent probabilities of the sale given its circumstances; and, when relevant
6. Any existing unfairness from a related credit agreement.

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

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

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

He suggests that the Credit Agreement was arranged by an unauthorised credit broker, the upshot of which is to suggest that the Lender wasn't permitted to enforce the Credit Agreement. However, it looks to me like Mr J knew, amongst other things, how much he was borrowing and repaying each month, who he was borrowing from and that he was borrowing money to pay for Fractional Club membership. And as the lending doesn't look like it was unaffordable for him (I've seen the details Mr J signed to with regard his income and other relevant information about his financial circumstances), even if the Credit Agreement was arranged by a broker that didn't have the necessary permission to do so (which I make no formal finding on), I can't see why that led to Mr J financial loss – such that I can say that the credit relationship in question was unfair to him as a result. And with that being the case, I'm not persuaded that it would be fair or reasonable to tell the Lender to compensate him, even if the loan wasn't arranged properly.

Mr J says that he only got to see the paperwork at the end of the sales process. I think it would be unusual to see the terms and conditions before understanding the basis of the membership. And I acknowledge that Mr J may have felt weary after a sales process that went on for a long time (albeit his description of the length of the presentation doesn't align with the Supplier's records on the matter). But he says little about what was said and/or done by the Supplier during their sales presentation that made him feel as if he had no choice but to purchase Fractional Club membership when he simply did not want to. He was also given a 14-day cooling off period and he has not provided a credible explanation for why he did not cancel his membership during that time. Mr J's description of the sale given some years after the event don't sit well with the Supplier's records of the sale from the time. And with all of that being the case, there is insufficient evidence to demonstrate that Mr J made the decision to purchase Fractional Club membership because his ability to exercise that choice was significantly impaired by pressure from the Supplier.

Overall, therefore, I don't think that Mr J credit relationship with the Lender was rendered unfair to him under Section 140A for any of the reasons above. But there is another reason, perhaps the main reason, why the PR says the credit relationship with the Lender was unfair to him. And that's the suggestion that Fractional Club membership was marketed and sold to him 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 Mr J'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 J says that the Supplier did exactly that at the Time of Sale – saying, in summary, that he was told by the Supplier that Fractional Club membership was the type of investment that would only increase in value.

The term "investment" is not defined in the Timeshare Regulations. But for the purposes of this provisional decision, and by reference to the decided authorities, an investment is a transaction in which money or other property is laid out in the expectation or hope of financial gain or profit.

A share in the Allocated Property clearly constituted an investment as it offered Mr J the prospect of a financial return – whether or not, like all investments, that was more than what he 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 Mr J 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 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 Mr J, the financial value of their share in the net sales proceeds of the Allocated Property along with the investment considerations, risks and rewards attached to them.

On the other hand, I acknowledge that the Supplier's sales process left open the possibility that the sales representative may have positioned Fractional Club membership as an investment. So, I accept that it's equally possible that Fractional Club membership was marketed and sold to Mr J 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.

Would the credit relationship between the Lender and Mr J have been rendered unfair to him had there been a breach of Regulation 14(3) of the Timeshare Regulations?

Having found that it was possible that the Supplier breached Regulation 14(3) of the Timeshare Regulations at the Time of Sale, I now need to consider what impact that breach had on the fairness of the credit relationship between Mr J and the Lender under the Credit Agreement and related Purchase Agreement as the case law on Section 140A makes it clear that regulatory breaches do not automatically create unfairness for the purposes of that provision. Such breaches and their consequences (if there are any) must be considered in the round, rather than in a narrow or technical way.

Indeed, it seems to me that, if I am to conclude that a breach of Regulation 14(3) led to a credit relationship between Mr J 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.

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 Mr J decided to go ahead with this purchase. It is understandable that after some time people's recollections of events can fade, but it is of note that Mr J's description of the purchase is significantly different to the detailed sales notes from the time, which describe what I would characterise as a considered approach to the purchase by Mr J including discussion with the Supplier over a number of days. Which doesn't sit well with his characterisation of his having to relent to substantial pressure by making this purchase. Which in turn doesn't sit particularly well with the allegation of being motivated to purchase by the prospect of profit. Mr J does make a specific allegation of being told how much the return might be at the end of the membership. But having considered Mr J's statement in itself and then in comparison to his letter of claim's comments about what happened during this purchase (which it isn't particularly consistent with) and considering the representations from both sides in the round I'm not persuaded that the prospect of a financial gain from Fractional Club membership was an important and motivating factor when Mr J decided to go ahead with this purchase.

That doesn't mean he wasn't interested in a share in the Allocated Property. After all, that wouldn't be surprising given the nature of the product at the centre of this complaint. But as Mr J himself doesn't persuade me that this purchase was motivated by the share in the Allocated Property and the possibility of a profit, I don't think a breach of Regulation 14(3) by the Supplier was likely to have been material to the decision Mr J 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 Mr J'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 he would have pressed ahead with the purchase whether or not there had been a breach of Regulation 14(3). And for that reason, I do not think the credit relationship between Mr J and the Lender was unfair to him even if the Supplier had breached Regulation 14(3).

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

Mr J says he was not given sufficient information at the Time of Sale by the Supplier about the ongoing costs of Fractional Club membership. He 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 Mr J sufficient information, in good time, on the various charges they could have been subject to as Fractional Club members in order to satisfy the requirements of Regulation 12 of the Timeshare Regulations (which was concerned with the provision of 'key information'). (Despite Mr J acknowledging that he was a previous timeshare owner and had experienced such charges increasing). But even if that was the case, I cannot see that the ongoing costs of membership were applied unfairly in practice. And as Mr J has not persuaded me that he would not have pressed ahead with the 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 his 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 Mr J in practice, nor that any such terms led him to behave in a certain way to his 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.

I've also considered the PR's arguments about commission making this arrangement unfair that it made originally. I note that it has chosen not to contend the investigator's findings on the matter or make any submissions with regard to Commission in response to those findings. Having reviewed the commission amount and considered it as a proportion of the advance and also of the charge for credit I'm not persuaded had Mr J been fully informed, he'd have acted any differently. I'm not persuaded the Lender owed Mr J a fiduciary duty. 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. I think he would still have taken out the loan to fund his purchase at the Time of Sale had there been more adequate disclosure of the commission arrangements that applied at that time.

## **Summary**

In conclusion, given the facts and circumstances of this complaint, I do not think that the Lender acted unfairly or unreasonably when it dealt with Mr J's Section 75 claim, and I am not persuaded that the Lender was party to a credit relationship with him under the Credit Agreement that was unfair to him for the purposes of Section 140A of the CCA. And having taken everything into account, I see no other reason why it would be fair or reasonable to direct the Lender to compensate Mr J.

## **My final decision**

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 13 April 2026.

Rod Glyn-Thomas  
**Ombudsman**