DRN-6053777

The complaint

Ms L's complaint is, in essence, that Mitsubishi HC Capital UK Plc, trading as Hitachi Personal Finance, (the 'Lender') acted unfairly and unreasonably by (1) being party to an unfair credit relationship with her under Section 140A of the Consumer Credit Act 1974 (as amended) (the 'CCA') and (2) deciding against paying a claim under Section 75 of the CCA.

What happened

Ms L was the member of a timeshare provider (the 'Supplier') – having purchased a number of products from it over time. But the product at the centre of this complaint is her membership of a timeshare that I'll call the 'Fractional Club' – points in which Ms L purchased on the dates below:

- 1,816 fractional points on 30 January 2012 for £6,297 ('Purchase Agreement 1')
- 2,340 fractional points on 25 June 2015 for £4,986 – having traded in her existing fractional points. ('Purchase Agreement 2')

(which, when appropriate, I'll simply refer to as the 'Purchase Agreements')

Ms L also bought fractional points in between the two purchases set out above but they were funded by a loan taken with a third-party lender. As this complaint is concerned with the purchases set out above, those are the 'Times of Sale' for the purposes of this decision.

Fractional Club membership was asset backed – which meant it gave Ms L more than just holiday rights. It also included a share in the net sale proceeds of a property named on the relevant purchase agreement (which I'll refer to as the 'Allocated Property 1 and 2' or, when appropriate, the 'Allocated Properties') after her membership term ends.

Ms L paid for her fractional points by taking the following amounts of finance of from the Lender:

- £6,297 on 30 January 2012 ('Credit Agreement 1')
- £12,454 (£7,468 of which was to consolidate the loan taken with the third-party lender I mentioned earlier) on 25 June 2015 ('Credit Agreement 2')

(which, when appropriate, I'll simply refer to as the ''Credit Agreements')

Ms L – using a professional representative (the 'PR') – wrote to the Lender on 29 October 2019 (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 Ms L's concerns as a complaint and issued its final response letter on 19 November 2021, rejecting it on every ground bar one. Essentially, it said it was unable to evidence that the loan under Credit Agreement 2 was affordable and offered to:

- Credit Ms L's account for the interest she'd paid up to that point – totalling £2,627.56;

- Add compensatory interest to that amount at the rate of 8% – totalling £888.49; and
- Ensure no further interest was incurred by Ms L, leaving her to make future payments towards the capital balance only.

The complaint had, by that time, been referred to the Financial Ombudsman Service. It was assessed by an Investigator who, having considered the information on file, wasn't persuaded to ask the Lender to do anymore for Ms L.

The PR confirmed Ms L's rejection of the Lender's offer and disagreement with the Investigator's assessment. The PR asked for an Ombudsman's decision – which is why it was passed to me.

I reviewed the complaint afresh and issued my provisional decision (PD), which included the following:

'***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 no different to that shared in several hundred ombudsman decisions on very similar complaints. And with that being the case, it is not necessary to set it out 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 this complaint should be upheld but only in part.

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 Times 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.

2012 sale

As a general rule, creditors can reasonably reject Section 75 claims that they are first informed about after the claim has become time-barred under the Limitation Act 1980 (the

'LA') as it wouldn't be fair to expect creditors to look into such claims so long after the liability arose and after a limitation defence would be available in court. So, it is relevant to consider whether Ms L's Section 75 claim for misrepresentation was time-barred under the LA before he put it to the Lender.

A claim under Section 75 is a "like" claim against the creditor. It essentially mirrors the claim Ms L could make against the Supplier.

A claim for misrepresentation against the Supplier would ordinarily be made under Section 2(1) of the Misrepresentation Act 1967. And the limitation period to make such a claim expires six years from the date on which the cause of action accrued (see Section 2 of the LA).

But a claim, like the one in question here, under Section 75 is also 'an action to recover any sum by virtue of any enactment' under Section 9 of the LA. And the limitation period under that provision is also six years from the date on which the cause of action accrued.

The date on which the cause of action accrued was the Time of Sale in 2012. I say this because Ms L entered into the purchase of her timeshare at that time based on the alleged misrepresentations of the Supplier – which she says were relied upon. And as the loan from the Lender was used to help finance the purchase, it was when she entered into the Credit Agreement that she suffered a loss.

Ms L first notified the Lender of her Section 75 claim on 29 October 2019. And as more than six years had passed between the Time of Sale in 2012 and when that claim was first put to the Lender, I don't think it was unfair or unreasonable of the Lender to reject Ms L's concerns about the Supplier's alleged misrepresentations.

The PR has argued that the limitation period can be extended in cases of concealment or fraud. There are provisions within the LA to extend limitation periods in such circumstances. However, I don't think the PR's arguments assist the claim in relation to misrepresentation because, for example, the concealment of the product being an investment is inconsistent with the PR's allegation that the Supplier promoted the product to Ms L as an investment.

<u>2015 sale</u>

The LA would not serve to time bar Ms L's claim about this sale, so I've considered it further.

It was said in the Letter of Complaint that Fractional Club membership had been misrepresented by the Supplier at the Time of Sale because Ms L was:

(1) *Told by the Supplier that Fractional Club membership had a guaranteed end date when that was not true.*
(2) *Told by the Supplier that she owned a 'fraction' of the Allocated Property when that was not true as it was owned by a trustee.*
(3) *Told by the Supplier that Fractional Club membership was an "investment" when that was not true.*

Neither the PR nor Ms L have set out in any detail what words and/or phrases where allegedly used by the Supplier to misrepresent Fractional Club for the reason given in points 1 or 2. However, the PR says that such representations were untrue because the Allocated Property was legally owned by a trustee and there was no indication of what duty of care it had to actively market and sell the property. Further, there is no guarantee that any sale will result at all, leaving prospective members to pay their annual management charge for an

indefinite and unspecified period.

However, I cannot see why the phrases in points 1 or 2 above would have been untrue at the Time of Sale even if it was said. It seems to me to reflect the main thrust of the contract Ms L entered into. And while, under the relevant Fractional Club Rules, the sale of the Allocated Property could be postponed for up to two years by the 'Vendor'[1], longer than that if there were problems selling and the 'Owners'[2] agreed, or for an otherwise specified period provided there was unanimous agreement in writing from the Owners, that does not render the representation above untrue. So, I am not persuaded that the representation above constituted a false statement of fact even if it was made.

As for point 3, it does not strike me as a misrepresentation even if such a representation had been made by the Supplier (which I make no formal finding on). Telling prospective members that they were investing their money because they were buying a fraction or share of one of the Supplier's properties was not untrue – nor was it untrue to tell prospective members that they would receive some money when the allocated property is sold. After all, a share in an allocated property was clearly the purchase of a share of the net sale proceeds of a specific property in a specific resort. And while the PR might question the exact legal mechanism used to give prospective members that interest, it did not change the fact that they acquired such an interest.

The PR has raised other matters as potential misrepresentations, but it seems to me that they are not allegations of the Supplier saying something that was untrue. Rather, it is that Ms L wasn't told things about the way the membership worked, for example, was that the obligation to pay management fees could be passed on to her children. It seems to me that these are allegations that Ms L wasn't given all the information she needed at the Times of Sale, and I will deal with this further below.

So, while I recognise that Ms L and the PR have concerns about the way in which Fractional Club membership was sold by the Supplier, when looking at the claim under Section 75 of the CCA, I can only consider whether there was a factual and material misrepresentation by the Supplier. For the reasons I've set out above, I'm not persuaded that there was. And that means that I don't think that the Lender acted unreasonably or unfairly when it dealt with this particular Section 75 claim.

Section 140A of the CCA: did the Lender participate in unfair credit relationships?

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

Having considered the entirety of the credit relationships between Ms L and the Lender along with all of the circumstances of the complaint, I don't think the credit relationships between them were 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 Times of Sale along with any relevant training material;*
2. *The provision of information by the Supplier at the Times 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 Times*

[1] Defined in the FPOC Rules as "CLC Resort Developments Limited".
[2] Defined in the FPOC Rules as "a purchaser who has entered into a Purchase Agreement and has been issued with a Fractional Rights Certificate (which shall include the Vendor for such period of time until the maximum number of Fractional Rights have been acquired)."

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

I have then considered the impact of these on the fairness of the relevant credit relationships between Ms L and the Lender.

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

Ms L's complaint about the Lender being party to unfair credit relationships was and is made for several reasons.

The PR says, for instance, that:

1. *Ms L was pressured by the Supplier into purchasing Fractional Club membership at the Time of Sale.*
2. *The right checks weren't carried out before the Lender lent to Ms L.*
3. *The loan interest was excessive.*
4. *The Credit Agreement was arranged by a broker acting outside of its authorisation.*

However, as things currently stand, none of these strike me as reasons why this complaint should succeed.

I acknowledge that Ms L may have felt weary after a sales process that went on for a long time. But she says little about what was said and/or done by the Supplier during her sales presentations that made her feel as if she had no choice but to purchase Fractional Club memberships when she simply did not want to. Ms L has indicated that her mental health made it difficult for her to decline the membership, but she accepts that the Supplier was unaware of this. She was also given 14-day cooling off periods and she has not provided a credible explanation for why she did not cancel her memberships during that time.

And with all of that being the case, there is insufficient evidence to demonstrate that Ms L made the decision to purchase Fractional Club memberships because her ability to exercise that choice was significantly impaired by pressure from the Supplier.

I haven't seen anything to persuade me that the right checks weren't carried out by the Lender regarding Credit Agreement 1 given this complaint's circumstances. But even if I were to find that the Lender failed to do everything it should have when it agreed to lend (and I make no such finding), I would have to be satisfied that the money lent to Ms L was actually unaffordable before also concluding that she lost out as a result and then consider whether the credit relationship with the Lender was unfair to her for this reason. But from the information provided, I am not satisfied that the lending was unaffordable for Ms L.

Regarding Credit Agreement 2, the Lender has already agreed to put things right for Ms L in line with this service's approach to complaints where the right checks weren't carried out and where this resulted in loss. With that in mind, I see no need to comment on this aspect further other than to say I've also considered whether this credit relationship might have been unfair under Section 140A as a result of the lending decision. However, I'm satisfied the redress already offered by the Lender results in fair compensation for Ms L in the circumstances of her complaint. I'm satisfied, based on what I've seen, that no additional award would be appropriate in this case.

Connected to this is the suggestion by the PR that the Credit Agreements were arranged by an unauthorised credit broker, the upshot of which is to suggest that the Lender wasn't permitted to enforce the Credit Agreements. However, it looks to me like Ms L knew, amongst other things, how much she was borrowing and repaying each month, who she was

borrowing from, that she was refinancing an earlier loan in respect of Credit Agreement 2, and that she was borrowing money to pay for Fractional Club membership. And with that being the case, I'm not persuaded that it would be fair or reasonable to tell the Lender to compensate Ms L.

Further, I don't think the rate of interest was excessive, compared either to other rates available from other point-of-sale lenders or on the open market, so I can't say it would be fair or reasonable to tell the Lender to do anything because of this.

Overall, therefore, I don't think that Ms L's credit relationships with the Lender were rendered unfair to her under Section 140A for any of the reasons above. But there is another reason, perhaps the main reason, why the PR now says the credit relationships with the Lender were unfair to her. And that's the suggestion that Fractional Club membership was marketed and sold to her as an investment in breach of prohibition against selling timeshares in that way.

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

The Lender does not dispute, and I am satisfied, that Ms L's Fractional Club membership met the definition of a "timeshare contract" and was a "regulated contract" for the purposes of the Timeshare Regulations.

Regulation 14(3) of the Timeshare Regulations prohibited the Supplier from marketing or selling Fractional Club membership as an investment. This is what the provision said at the Time of Sale:

"A trader must not market or sell a proposed timeshare contract or long-term holiday product contract as an investment if the proposed contract would be a regulated contract."

But the PR says that the Supplier did exactly that at the Times of Sale.

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.

Shares in the Allocated Properties clearly constituted investments as they offered Ms L the prospect of a financial return – whether or not, like all investments, that was more than what she first put into it. But it is important to note at this stage that the fact that Fractional Club membership included an investment element did not, itself, transgress the prohibition in Regulation 14(3). That provision prohibits the marketing and selling of a timeshare contract as an investment. It doesn't prohibit the mere existence of an investment element in a timeshare contract or prohibit the marketing and selling of such a timeshare contract per se.

In other words, the Timeshare Regulations did not ban products such as the Fractional Club. They just regulated how such products were marketed and sold.

To conclude, therefore, that Fractional Club membership was marketed or sold to Ms L as an investment in breach of Regulation 14(3), I have to be persuaded that it was more likely than not that the Supplier marketed and/or sold membership to her as an investment, i.e. told her or led her to believe that Fractional Club membership offered her the prospect of a financial gain (i.e., a profit) given the facts and circumstances of this complaint.

There is competing evidence in this complaint as to whether Fractional Club membership was marketed and/or sold by the Supplier at the Times 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 Ms L, the financial value of their share in the net sales proceeds of the Allocated Properties along with the investment considerations, risks and rewards attached to them.

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

Were the credit relationships between the Lender and Ms L rendered unfair?

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

Indeed, it seems to me that, if I am to conclude that a breach of Regulation 14(3) led to credit relationships between Ms L and the Lender that were unfair to her and warranted relief as a result, whether the Supplier's breach of Regulation 14(3) led her to enter into the Purchase Agreements and the Credit Agreements is an important consideration.

But on my reading of the evidence before me, the prospect of a financial gain from Fractional Club membership was not an important and motivating factor when Ms L decided to go ahead with her purchases. I say that having considered her own recollections of the sales and, in particular, the undated handwritten statement sent to this service by the PR in March 2020. In it, Ms L suggests she went ahead with one of the purchases to 'get us out of the contract'. She mentions parting with £6,000, so I take it she was referring to the sale in 2012. She says she then discovered this was a 'SCAM'. While she doesn't elaborate on what the nature of the supposed scam was, it's clear to me that exiting her existing contract appeared to be her motivation in agreeing to the Fractional Club membership at that time. That's as opposed to, say, investing and making a financial gain or profit.

Further handwritten notes, dated 29 April 2019 and apparently made by the PR, were provided in May 2025. These include that Ms L was told 'that after 19 years the [sale] proceed will recover your investment'. However, being told she'd recover her investment doesn't indicate she was told she stood to gain financially from the sale.

Making a profit was mentioned in a third-party timeshare relinquishment claim form also dated 29 April 2019. But I'm more inclined to place emphasis on the recollections Ms L provided in her own words and for the purposes of complaining about the Lender, such as those included in her undated statement, which make no mention of this as a material motivation.

That doesn't mean Ms L wasn't interested in a share in the Allocated Properties. After all, that wouldn't be surprising given the nature of the product at the centre of this complaint. But as Ms L herself don't persuade me that her purchases were motivated by her shares in the Allocated Properties and the possibility of a profit, I don't think breaches of Regulation 14(3) by the Supplier were likely to have been material to the decisions Ms L 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 Ms L's decisions to purchase Fractional Club membership at the Times of Sale were motivated by the prospect of a financial gain (i.e., a profit). On the contrary, I think the evidence suggests she would have pressed ahead with her purchases whether or not there had been a breach of Regulation 14(3). And for that reason, I do not think the credit relationships between Ms L and the Lender were unfair to her even if the Supplier had breached Regulation 14(3).

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

The PR says that Ms L was not given sufficient information at the Times of Sale by the Supplier in order to make an informed choice.

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 Ms L sufficient information, in good time, on the various charges she 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'). But even if that was the case, I cannot see that the ongoing costs of membership were applied unfairly in practice. And as neither Ms L nor the PR have persuaded me that she would not have pressed ahead with her purchase had the finer details of the Fractional Club's ongoing costs been disclosed by the Supplier in compliance with Regulation 12, I cannot see why any failings in that regard are likely to be material to the outcome of this complaint given its fact and circumstances.

As for the PR's argument that Ms L's heirs would inherit the on-going management charges, I fail to see how that could be the case or that it could have led to an unfairness that warrants a remedy.

Conclusion

In conclusion, I do not think that the Lender acted unfairly or unreasonably when it dealt with the relevant Section 75 claim, and I am not persuaded that the Lender was party to credit relationships with Ms L under the Credit Agreements that were unfair to her for the purposes of Section 140A of the CCA – nor do I see any other reason why it would be fair or reasonable to direct the Lender to compensate her other than with regard to the offer it's already made.'

At that stage of the PD, I set out what I thought the Lender should do to put things right for Ms L. I gave the parties the opportunity to provide further evidence and arguments before I re-considered the complaint and issued my final decision.

The Lender didn't respond to my PD. The PR said Ms L accepted my PD.

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.

Given the lack of response from the Lender to my PD, and Ms L's acceptance of it, I see no need to depart from the findings or outcome I reached previously. As such, I simply affirm that PD here, along with the steps the Lender's required to take to compensate Ms L.

Putting things right

Regarding its lending decision in relation to Credit Agreement 2, the Lender should:

- Rework the loan to remove any interest, fees or charges so only the amount borrowed is left to be repaid – then deduct any payments Ms L made to the loan from this.
- If, having done that, Ms L has repaid the balance then anything extra should be treated as overpayments. Any overpayments should be refunded to her with interest at 8% per year simple* and any relevant adverse information should be removed from Ms L's credit file.

*HM Revenue and Customs requires the Lender to deduct tax from the interest payment referred to above. The Lender must give Ms L a certificate showing how much tax it's deducted if she asks for one.

My final decision

For the reasons given, my final decision is that Mitsubishi HC Capital UK Plc, trading as Hitachi Personal Finance, should put things right for Ms L as explained above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms L to accept or reject my decision before 2 February 2026.

Nimish Patel
Ombudsman