DRN-6061327

The complaint

Mr M's complaint is, in essence, that Mitsubishi HC Capital UK PLC trading as Novuna Consumer Finance[1] (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 claims under Section 75 of the CCA.

The timeshare in question was bought in the joint names of Mr and Mrs M. But, as the purchase was made with a loan in Mr M's sole name, he is the only eligible complainant here. I will, however, refer to both Mr and Mrs M where appropriate.

What happened

Mr and Mrs M purchased membership of a timeshare (the 'Fractional Club') from a timeshare provider (the 'Supplier') on 21 August 2015 (the 'Time of Sale'). They entered into an agreement with the Supplier to buy 1,200 fractional points at a cost of £12,521 (the 'Purchase Agreement').

Fractional Club membership was asset backed – which meant it gave Mr and Mrs M 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 their membership term ends.

Mr M paid for their Fractional Club membership by taking finance of £12,521 from the Lender (the 'Credit Agreement').

Mr M – using a professional representative (the 'PR') – wrote to the Lender on 31 May 2022 (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 did not respond to Mr M's concerns, so the PR referred his complaint to the Financial Ombudsman Service. When contacted by this Service, the Lender stated it had never received the complaint and asked to be given time to consider it. And having done so, it rejected it on all grounds.

Mr M did not accept the Lender's decision, so his complaint was then assessed by an Investigator at this Service who, having considered the information on file, rejected the complaint on its merits.

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

The provisional decision

I considered the matter and issued a provisional decision (the 'PD') setting out my initial thoughts on the merits of Mr M's complaint.

[1] At the time the credit was provided, the Lender was trading as Hitachi Personal Finance

In the PD I said:

"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 do not currently think this complaint should be upheld.

However, before I explain why, I want to make it clear that my role as an Ombudsman is not to address every single point that has been made to date. Instead, it is to decide what is fair and reasonable in the circumstances of this complaint. So, if I have not commented on, or referred to, something that either party has said, that does not mean I have not considered it.

Section 75 of the CCA: the Supplier's misrepresentations at the Time of Sale

The CCA introduced a regime of connected lender liability under section 75 that affords consumers ("debtors") a right of recourse against lenders that provide the finance for the acquisition of goods or services from third-party merchants ("suppliers") in the event that there is an actionable misrepresentation and/or breach of contract by the supplier.

Certain conditions must be met if the protection afforded to consumers is engaged, including, for instance, the cash price of the purchase and the nature of the arrangements between the parties involved in the transaction. The Lender doesn't dispute that the relevant conditions are met. But for reasons I'll come on to below, it isn't necessary to make any formal findings on them here.

The Lender considered Mr M's claims under Section 75 but rejected them. Having considered everything, I do not think the Lender was unfair or unreasonable in doing that, so I do not think that this part of his complaint ought to be upheld. I'll explain why.

As a general rule, creditors such as the Lender can reasonably reject Section 75 claims that they are first informed about after the claim has been 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 Mr M's claims were time-barred under the LA before they put them to the Lender.

The LA imposes time limits for people to start legal proceedings – and there are different time limits for different types of claims. Essentially, this means that if someone waits too long to make a claim, the court will usually say it's 'time-barred'. For this reason, if a consumer makes a claim after the relevant time-limit has expired, we'd usually say it was fair and reasonable for the creditor to take into account the timing of the claim to decline it.

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

A claim for misrepresentation against the Supplier would ordinarily be made under Section 2(1) 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. 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 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 date of the sale – 21 August 2015. I say this because Mr and Mrs M entered into the purchase of Fractional Club membership at that time based on the alleged misrepresentations of the Supplier, which they say they relied

on. And as the loan from the Lender was used to help finance the purchase, it was when Mr M entered into Credit Agreement that he suffered a loss.

Mr M first notified the Lender of his Section 75 claim on 31 May 2022. And as more than six years had passed between the Time of Sale and when he first put his claims to the Lender, I don't think it was unfair or unreasonable of the Lender to reject Mr M's concerns about the Supplier's alleged misrepresentations.

And that means that I don't think that the Lender acted unreasonably or unfairly when it dealt with this particular Section 75 claim of misrepresentation.

Section 75 of the CCA: the Supplier's Breach of Contract

I have already summarised how Section 75 of the CCA works and why it gives consumers a right of recourse against a lender. So, it is not necessary to repeat that here other than to say that, if I find that the Supplier is liable for having breached the Purchase Agreement, the Lender is also liable.

I have also already explained what effect the LA can have on claims made to the Lender under Section 75 of the CCA.

Mr M says that they could not holiday where and when they wanted to – which, on my reading of the complaint, suggests that the Supplier was not living up to its end of the bargain, potentially breaching the Purchase Agreement. It is unclear when this alleged breach of contract occurred, as Mr M has not given any more details other than the bare allegation. So it is possible that this alleged breach happened more than six years before the Section 75 claim was made, and the Lender may have a defence to it under the LA.

But in the circumstances of this complaint, I don't think that matters, as I do not think the Lender was unfair or unreasonable when it rejected this claim anyway.

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 and Mrs M states that the availability of holidays was/is subject to demand. I accept that they may not have been able to take certain holidays, but other than the bare allegation, Mr M has provided no evidence to support it, and has provided no evidence to show when he and Mrs M were unable to book the holiday(s) they were entitled to under the Purchase Agreement. So, I have not seen enough to persuade me that the Supplier has breached the terms of the Purchase Agreement.

So, from the evidence I have seen, I do not think the Lender is liable to pay Mr M any compensation for a breach of contract by the Supplier. And with that being the case, I do not think the Lender acted unfairly or unreasonably in relation to this aspect of the complaint either.

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

I've already explained why I'm not persuaded that Fractional Club membership was actionably misrepresented by the Supplier at the Time of Sale, or that there was a breach of contract. 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 M and the Lender along with all of the circumstances of the complaint, I don't think the credit relationship between

them was likely to have been rendered unfair for the purposes of Section 140A. When coming to that conclusion, and in carrying out my analysis, I have looked at:

1. *The standard of the Supplier's commercial conduct – which includes its sales and marketing practices at the Time of Sale along with any relevant training material;*
2. *The provision of information by the Supplier at the Time of Sale, including the contractual documentation and disclaimers made by the Supplier;*
3. *Evidence provided by both parties on what was likely to have been said and/or done at the Time of Sale; and*
4. *The inherent probabilities of the sale given its circumstances.*

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

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

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

The PR says, for instance that:

1. *The right checks weren't carried out before the Lender lent to Mr M; and*
2. *Mr and Mrs M were pressured by the Supplier into purchasing Fractional Club membership at the Time of Sale.*

However, as things currently stand, neither of these strike me as reasons why this complaint should succeed.

I haven't seen anything to persuade me that the right checks weren't carried out by the Lender 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 Mr M was actually unaffordable, before also concluding that he lost out as a result, and then consider whether the credit relationship with the Lender was unfair to him for this reason. But from the information provided, I am not satisfied that the lending was unaffordable for Mr M.

I acknowledge that Mr and Mrs M may have felt weary after a sales process that went on for a long time. But they say little about what was said and/or done by the Supplier during their sales presentation that made them feel as if they had no choice but to purchase Fractional Club membership when they simply did not want to. They were also given a 14-day cooling off period and they have not provided a credible explanation for why they did not cancel their membership during that time. And with all of that being the case, there is insufficient evidence to demonstrate that Mr and Mrs M made the decision to purchase Fractional Club membership because their ability to exercise that choice was significantly impaired by pressure from the Supplier.

Overall, therefore, I don't think that Mr M's 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 now 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 Mr and Mrs M 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 and Mrs M'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 Time 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.

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

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

To conclude, therefore, that Fractional Club membership was marketed or sold to Mr and Mrs M 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 them as an investment, i.e. told them or led them to believe that Fractional Club membership offered them the prospect of a financial gain (i.e., a profit) given the facts and circumstances of this complaint.

And 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 and Mrs M, 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 and Mrs M as an investment in breach of Regulation 14(3).

However, whether or not there was a breach of the relevant prohibition by the Supplier is not

ultimately determinative of the outcome in this complaint for reasons I will come on to shortly. And with that being the case, it's not necessary to make a formal finding on that particular issue for the purposes of this decision.

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

Having found that it was possible that the Supplier breached Regulation 14(3) of the Timeshare Regulations at the Time of Sale, I now need to consider what impact that breach had on the fairness of the credit relationship between Mr M and the Lender under the Credit Agreement and related Purchase Agreement. This is because 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 M and the Lender that was unfair to him and warranted relief as a result, whether the Supplier's breach of Regulation 14(3) led them to enter into the Purchase Agreement and him into the Credit Agreement is an important consideration.

But on my reading of the evidence before me, I do not think the prospect of a financial gain from Fractional Club membership was an important and motivating factor when Mr and Mrs M decided to go ahead with their purchase. I'll explain.

As part of the PR's initial engagement with Mr and Mrs M, it gave them a questionnaire to complete regarding their purchase of the Fractional Club. This included questions regarding what the Supplier told them about the membership, and were generally tick-box 'yes' and 'no' answers.

One of the first sections was as follows:

SALES PROCESS

At the point of sale, were you advised of the following?

Your timeshare ownership would increase in value and produce a profit; therefore, it was an investment to you?	Yes	✔	No	
The timeshare provider would sell your ownership on your behalf.	Yes	✔	No	
Purchasing the product would guarantee you an early exit from your ownership?	Yes		No	✔

And further:

Fractional Products

Were you sold a fractional product where you were told that you were purchasing an investment?	Yes ✔	No
Did they say you would make a profit from your purchase of the fraction?	Yes ✔	No
Did they tell you the property would have an appreciating value?	Yes ✔	No
Did they tell you it would sell for more than you paid?	Yes ✔	No
Did they give you the impression that the property would be easy to resell?	Yes ✔	No
Have you looked at the possibility of selling your fraction?	Yes ✔	No
Was it as easy and profitable to sell as you were promised?	Yes	No ✔
Did they show you the Deed of Trust?	Yes	No ✔

So, both of these sections appear to suggest that the Fractional Club was positioned to Mr and Mrs M as something that could provide them with a profit. But I don't feel able to place much weight on these answers because of the leading nature of the questions. There is a real risk that the questions could be seen as designed to elicit a specific 'yes' response from the consumers.

The way the questions are framed also doesn't allow Mr and Mrs M to provide any personal insight into their particular purchase. And where they were able to add 'Additional Comments' following the second section, they have left this blank. So there is no suggestion as to what Mr and Mrs M's motivations for the purchase were. The questions and answers only relate to what they were allegedly told, not why they decided to proceed.

But I am assisted somewhat in understanding why Mr and Mrs M bought the Fractional Club membership when I consider their free-hand answer at the end of the questionnaire. They said:

> *"My husband has suffered from prostate cancer, He is diabetic and also suffers from high blood pressure. Although we have paid for the fractional property in full. We felt cheated by [the Supplier] for the fact that we have never been able to travel to places we desired due to non availability of accommodation in those places.*
>
> *Moreso, we have always had to settle for less desirable places. [The Supplier] always advised us to go on exchange international in order to secure desirable accommodation but this comes with additional fees.*

We are seeking termination as the fractional property hasn't met our needs and the fact that my husband is no longer in good health to enjoy travel."

So, from this it seems to me that Mr and Mrs M wish to terminate their membership due to disappointment with the holidays it has provided, and significantly because Mr M's health means he is no longer able to enjoy travel. That doesn't mean they weren'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 I do not find the answers given by Mr and Mrs M to the questionnaire persuade me that their purchase was motivated by their share in the Allocated Property and the possibility of a profit. It seems to me that they wanted the membership for the holidays it could provide, and they wanted to terminate their membership because they were disappointed in availability, and importantly, because Mr M was no longer able to travel. So, I don't think a breach of Regulation 14(3) by the Supplier was likely to have been material to the decision they 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 and Mrs M'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 they would have pressed ahead with their purchase for the holidays it would provide, 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 M 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

The PR says that Mr and Mrs M were not given sufficient information at the Time of Sale by the Supplier in order to make an informed choice.

It isn't clear what information the PR thinks the Supplier failed to provide at the Time of Sale. But 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.

So, while I acknowledge that it is also possible that the Supplier did not give Mr and Mrs M sufficient information, in good time, in order to satisfy the requirements of Regulation 12 of the Timeshare Regulations (which was concerned with the provision of 'key information'), even if that was the case, neither Mr M nor the PR have persuaded me that they were deprived of information that would have led them to make a different purchasing decision at the Time of Sale. And with that being the case, even if there were information failings (which I make no formal finding on), I can't see why they led to a financial loss.

Mr M's Commission Complaint

I note that one of Mr M's other concerns relates to alleged payments of commission by the Lender to the Supplier for acting as a credit broker and arranging the Credit Agreements. The Supreme Court's recent judgment in Johnson v FirstRand Bank Ltd, Wrench v FirstRand Bank Ltd and Hopcraft v Close Brothers Ltd [2025] UKSC 33 ('Johnson, Wrench and Hopcraft') clarified the law on payments of commission – albeit in the context of car dealers acting as credit brokers. In my view, the Supreme Court's judgment sets out

principles which appear capable of applying to credit brokers other than car dealer–credit brokers. At present, I do not know enough about the relevant arrangements in place at the Time of Sale. So, once I know more, I will finalise my findings on this complaint.

Conclusion

In conclusion, as things currently stand, I do not think that the Lender acted unfairly or unreasonably when it dealt with the relevant Section 75 claims, and if I put the issue of commission to one side for the time being, I am not persuaded that the Lender was party to a credit relationship with Mr M under the Credit Agreement that was unfair to him 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 him.

But, as I've already said, it is necessary to wait for information on the relevant arrangements (considered in Johnson, Wrench and Hopcraft) between the Lender and Supplier before finalising my thoughts on the merits of this complaint."

The responses to the provisional decision

The Lender responded to the PD and accepted it, and said no commission had been paid to the Supplier. Neither the PR nor Mr M responded.

Following this I also communicated to both sides how I was not persuaded that Mr M's credit relationship with the Lender was unfair to him for reasons relating to the commission arrangements between it and the Supplier.

The PR responded to this to say it had nothing further to add.

Having received the relevant responses from both sides, I am now finalising my decision.

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.

Following the responses from both sides, I've considered the case afresh. And having done so, and because no new evidence has been submitted or arguments made in response to my initial findings, I see no reason to depart from the outcome as set out in the provisional decision above.

Given the facts and circumstances of this complaint, I do not think that the Lender acted unfairly or unreasonably when it dealt with Mr M's Section 75 claims, 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 M.

My final decision

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 4 February 2026.

Chris Riggs
Ombudsman