

The complaint

Mr G complaint is, in essence, that Mitsubishi HC Capital UK PLC trading as Novuna Personal Finance (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.

What happened

Mr G purchased membership of a timeshare (the 'Fractional Club') from a timeshare provider (the 'Supplier') on 25 August 2017 (the 'Time of Sale'). He entered into an agreement with the Supplier to buy 1,130 fractional points at a cost of £15,574 (the 'Purchase Agreement') after trading in his existing Trial Membership.

Fractional Club membership was asset backed – which meant it gave Mr G 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 G paid for his Fractional Club membership by taking finance of £18,796 from the Lender (the 'Credit Agreement'). The additional amount was used to pay off (consolidate) an existing loan with the Lender, which was used to purchase Trial Membership. Mr G paid off the Credit Agreement on 18 October 2018.

Mr G – using a professional representative (the 'PR') – wrote to the Lender on 31 July 2024 (the 'Letter of Complaint') to raise several 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 G's concerns as a complaint and issued its final response letter on 4 October 2024, rejecting it on every ground.

Mr G then referred the complaint 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 G disagreed with the Investigator's assessment and asked for an Ombudsman's decision – which is why it was passed to me. I issued a provisional decision explaining that I was planning to uphold the complaint. The PR responded to say it had nothing more to add. The Lender responded to say it disagreed, and provided some further comments and evidence for me to consider, which I will deal with below, towards the end of the section entitled "What I've decided – and why".

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. But if either side would like me to confirm what I think that context is, they can let me know in response to this provisional decision.

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.

In line with my provisional findings, a copy of which are below, I have decided 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 G 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.

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 several aspects to this complaint, it is not necessary to make formal findings on all of them because, even if one or more of those aspects ought to succeed, the redress I am currently proposing puts Mr G in the same or a better position than he would otherwise be in.

START OF COPY OF PROVISIONAL FINDINGS

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

Having considered the entirety of the credit relationship between Mr G 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 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.
6. Where relevant, 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 G and the Lender.

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

The Lender does not dispute, and I am satisfied, that Mr G 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 G says that the Supplier did exactly that at the Time of Sale – saying, in summary, that he was told by the Supplier that he would own part of the Allocated Property and at some stage it would be sold, and he would get his money back and maybe more (ie a profit).

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.

Mr G'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 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 G 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 G, the financial value of his 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 not sold to Mr G as an investment.

However, weighing up what happened in practice is, in my view, rarely as simple as looking at the contemporaneous paperwork. And for reasons I'll now come on to, given the facts and circumstances of this complaint, I think the Supplier is likely to have breached Regulation 14(3) of the Timeshare Regulations.

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').
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.
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 G.

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 ~~Club Med~~.

✍️ **LINK:** Before I show you how the product works, I am just going to tell you how ~~Club Med~~ 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 holidays 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 G) 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 (which is what Mr G has said).

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 G 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)).”¹

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 & BPF² 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

¹ 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>

² *Shawbrook Bank Ltd, R (On the Application Of) v Financial Ombudsman Service Ltd* [2023] EWHC 1069 (Admin) (05 May 2023)

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.”

*“[...] 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.”*

(my **emphasis** added)

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” (which Mr G recalls being used) and notions that prospective members were building equity in something tangible that could make them some money at the end (which Mr G remembers being told). 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 G 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 them either implausible or hard to believe when Mr G says he was told that he would own part of the Allocated Property which would later be sold and he would get his money back and maybe more (ie a profit). Considering the evidence, and on the balance of probabilities, I think that's likely to be what Mr G 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.

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 G 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 that, if I am to conclude that a breach of Regulation 14(3) led to a credit relationship between Mr G 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.

On my reading of Mr G testimony, 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. While Mr G's recollections in his statement are brief in this regard, but that Fractional Club membership was an investment is a point he has made consistently since October 2021 when he first sought assistance from a timeshare advice company. On 6 October 2021, Mr G submitted a webform to the timeshare advice company, in which he wrote:

"Please could you contact me as soon as possible to help me recover an investment I have made with [the Supplier]."

On 4 February 2022, Mr G spoke to the timeshare advice company over the phone. It completed a questionnaire during that conversation, in which it noted the following in a section entitled, "Any other comments (eg what told about the availability of choice when booking)":

"Purchased originally for holidays + to invest and get return at the end... was definitely supposed to be an investment – bricks & mortar go up in value... takes holidays anyway so this seemed like a great idea to invest at same time."

Mr G was then put in touch with the PR, which he spoke to on 8 February 2022, at which time the PR made notes including the following about the Time of Sale:

"... rep convinced them that property will be later sold and get their money back and possible more."

The PR has also provided a statement on 15 January 2024, which it said was taken in February 2022. In this Mr G says of the Time of Sale:

"We ended up buying a Fractional in [resort location]. We owned part of the property and at some stage it would be sold and we would get our money back and maybe more."

While Mr G's recollections are brief, they have been consistent in this allegation. And bearing in mind what I said above about how the Supplier sold and marketed Fractional Club membership at the Time of Sale, I find that it is likely that the Supplier's breach of Regulation 14(3) was material to his decision to purchase.

That doesn't mean Mr G was not interested in holidays. His own testimony demonstrates that he quite clearly was. And that is not surprising given the nature of the product at the centre of this complaint. But as Mr G 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 his trial membership and booking holidays independently or through other routes (such as travel agents). And with that being the case, I think the Supplier's breach of Regulation 14(3) was material to the decision Mr G ultimately made.

Mr G has not said or suggested 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.

END OF COPY OF PROVISIONAL FINDINGS

The Lender's response to my provisional decision

The Lender made the following points (the numbered points below) as to why it disagreed with my provisional decision to uphold this complaint. My analysis of each point is below.

- I have relied on the timeshare advice company webform and questionnaire, and the PR's call notes despite these being provided only after our Investigator issued their assessment rejecting the complaint. These should be given less weight when reaching my decision.

I have considered the timing of this evidence being provided. But I am not persuaded that I should give it little or no weight in the circumstances of this complaint. There is nothing to persuade me that these documents were not created on the dates shown on them.

In respect of the PR's call note, my understanding is that the PR provided the Financial Ombudsman Service with a significant number of such documents in a short period of time after they were requested by us (after we became aware that they held such records which could help us reach fair and reasonable decisions in these complaints). It is implausible, given the timing of their submission, the volume of documents provided and the differences in those documents show, that these were somehow created following our request.

I have dealt with dozens of timeshare complaints from the PR involving similar documents (webform, questionnaire, call notes and statement). And it is not always the case that the various documents are consistent in the way they are here. Often, I conclude that the evidence direct from the consumer (such as a witness statement) is likely to be the most reliable evidence of their recollections. Sometimes (as here) that supports the complaint being upheld. But often (as in other cases) it does not. In this case Mr G's statement is brief but it is consistent with what he initially told the timeshare advice company on the webform, what the timeshare advice company noted down in its questionnaire when it spoke to him and what the PR noted in its call note when it spoke to him as well. As a whole I think this is plausible and persuasive evidence that Mr G viewed Fractional Club membership as an investment at the Time of Sale.

- The timeshare advice company questionnaire and PR's call notes are not direct testimony from Mr G.

While this is true, if the questionnaire and call notes reflected what Mr G said at those times, then this is good evidence of what he recalled from the Time of Sale. I have no reason in this case to doubt they do reflect what Mr G said at those times, given they are consistent with what he himself said on the webform and in his statement.

- Mr G's statement's electronic metadata shows it was created on 2 November 2023 and last modified on 23 April 2024. Both dates are after judgement was handed down in the case of *Shawbrook & BPF v FOS* and so the statement may have been influenced by this.

Mr G's statement was provided to us on 15 January 2024. But the PR said the statement was written in February 2022 – around the time it made its call notes and Mr G gave the PR authority to represent him. So, it is not implausible that the statement would've been written at that time. I note the call note and the statement essentially say the same things – albeit the statement is a bit more detailed. That is as I would expect if they were written around the same time. I note the Lender's comments about the metadata of the statement provided to us. The document is a PDF rather than the original word-processed document. The creation date would therefore be when the PDF file was created (not the date the statement was written). And the latest modification date seems to be after it was provided to us. Overall, I see no reason to give little or no weight to the statement. Especially given that Mr G completed the webform – describing Fractional Club membership as an investment – in October 2021, which was before the relevant judgement was handed down.

- There is no explanation as to why the claim was not made sooner given the timeshare advice company was first contacted in 2021 and the PR in 2022.

The PR has explained that Mr G initially contacted the timeshare advice company for help in exiting his timeshare before making a claim to the Lender. Even if that is not ideal, my experience suggests that was the process in place with this PR at that time. In any case, the claim was made within the relevant time limits, as was Mr G's complaint to the Financial Ombudsman Service. So, even if the claim and complaint could've been made sooner, there was no obligation to do so. And I do not think the delay gives me any reason to give little or no weight to the evidence that has been provided.

- The description of the investment allegations varies across the different evidence (webform, questionnaire, call notes and statement).

While there is some variation (see below extracts for comparison) this does not appear to be significant. Overall, it seems Mr G consistently described Fractional Club membership as an investment since before he had contact the timeshare advice company or the PR. And where this was expanded on it was clear that he meant he could make a profit from it.

1. Webform – *“an investment”*.
2. Questionnaire – *“purchased originally for holidays + to invest and get return at the end... was definitely supposed to be an investment – bricks & mortar go up in value... take holidays anyway so this seemed like a great idea to invest at same time.”*
3. Call notes – *“property will later be sold and get their money back and possible more”*.
4. Statement – *“We owned part of the property and at some stage it would be sold and we would get our money back and maybe more.”*

- Contemporaneous evidence should be preferred, firstly:
 - The Supplier's contact notes 25 August 2017 - *"Clients confirmed happier with smaller fraction CB is now 500 and we are paying 2 years man fees. Spoke about over payments and client said they were very pleased. Rewritten to 716048, downgrade."*
- The Lender says it is illogical that Mr G would reduce his fractional share and limit his return if he was motivated by a financial gain.

The Lender seems to misunderstand the reference to a downgrade here. At the Time of Sale Mr G had a Trial Membership with the Supplier. This gave him a set number of weeks' holiday that could be taken over a set period of time. He owned no fractional rights and was not a member of the Fractional Club. It appears to me that Mr G negotiated with the Supplier following the initial presentation and ultimately agreed to purchase Fractional Club membership with fewer fractional points than he was initially offered. It is likely that this purchase cost less than the membership he was initially offered. But it would still have offered him a return at the end of the membership term, which was more than he would get if he did not make a purchase (which would be nothing, since he held no fractional rights at that time).

- Secondly, the Supplier's contact notes 30 August 2018 show that Mr G upgraded for holiday reasons. The Lender says this indicates he had similar motivations at the Time of Sale as well. The contact note says:
 - - *"FPOC 2 upgrade to multi fraction 1360pts. Done for the extra pts & benefits. Occ '19. Nice couple with 4 children so very happy with accommodation. They are here next week in PC."*

I do not think that this provides anything persuasive in terms of Mr G's motivations at the Time of Sale. The evidence provided shows he did have some interest in holidays at that time, which I acknowledged in my provisional findings.

- On 24 September 2018 Mrs G contacted the Supplier asking: *"Could you give us information on how we go about selling our fractions please. We're really struggling to be able to afford our much needed extension on our home and can't see any other way at this stage than to save the money we're spending on our holidays!"* The Lender says if Mr G's intention was to save money on holidays, not to realise a profit, which reinforces that he viewed Fractional Club membership as holiday product not an investment.

It is clear from the email that Mr and Mrs G wanted to save some money to pay for their extension. But I note they were enquiring about *selling* their membership (not giving it up for nothing) – which would give them some return and potentially a profit. So, I do not think this indicates that they did not view Fractional Club membership as an investment at that time.

- Mr G's statement gives no detail of what was said or shown to him to create an impression or belief that Fractional Club membership was an investment.

I acknowledge that Mr G's statement is brief. And it does not give additional detail that might have made it even more persuasive. But I do not think in this case that the absence of additional detail is sufficient for me to conclude (given all the evidence) that Mr G was not motivated to purchase Fractional Club membership in part because he hoped to profit from

it. Indeed, I am persuaded that the evidence in this case indicates that was part of his motivation. And as such that I should uphold this complaint.

Conclusion

Given the facts and circumstances of this complaint, I think the Lender participated in and perpetuated an unfair credit relationship with Mr G 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.

Fair Compensation

Having found that Mr G 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 (ie not entered into the Purchase Agreement), and therefore not entered into the Credit Agreement.

Mr G was a trial member before purchasing Fractional Club membership. As I understand it, trial membership involved the purchase of a fixed number of week-long holidays that could be taken with the Supplier over a set period in return for a fixed price. The purpose of trial membership was to give prospective members of the Supplier's longer-term products a short-term experience of what it would be like to be a member of, for example, the Fractional Club. According to an extract from the Supplier's business plan, roughly half of trial members went on to become timeshare members.

If, after purchasing trial membership, a consumer went on to purchase membership of one of the Supplier's longer-term products, their trial membership was usually cancelled and traded in against the purchase price of their timeshare – which was what happened at the Time of Sale. Mr G's trial membership was, therefore, a precursor to his Fractional Club membership. With that being the case, the trade-in value acted, in essence, as a deposit on this occasion and I think this ought to be reflected in the redress when remedying the unfairness I have found.

On 30 August 2018 (the 'Time of Upgrade'), Mr G upgraded his Fractional Club membership ('FC Membership 1') by trading in his existing membership, paying an additional £5,649 and entering a new purchase agreement for a total of 1,360 Fractional Points ('FC Membership 2'). And the Credit Agreement was refinanced using a new loan taken from a different lender at the Time of the Upgrade.

Formally, the new purchase agreement superseded the old one, but in my view, it really just supplemented Mr G's FC Membership 1, rolling over his existing Fractional Points into the new membership. I don't think the upgrade ended the unfairness under the Credit Agreement and related Purchase Agreement that stemmed from the acts and/or omissions of the Supplier at the Time of Sale given the facts and circumstances of this complaint. So, I think that there were ongoing effects of unfairness from Mr G's original purchase of FC Membership 1 and the Credit Agreement for which the Lender is answerable.

However, I recognise that the upgrade in question was paid for by funding from a new lender who is likely to bear some responsibility for any acts and/or omissions in the sales presentation. And for that reason, I'm not persuaded the Lender should have to answer for

the financial consequences specifically associated with the 230 additional Fractional Points Mr G purchased at the Time of Upgrade.

So, in my view, the Lender needs to refund a proportion of the management charges payable after the Time of Upgrade that relate to the 1,130 Fractional Points Mr G held originally – which, in this occasion, equates to 66% of the annual management charges paid after the Time of Upgrade.

So, given all of the above, here's what I think needs to be done to compensate Mr G – whether or not a court would award such compensation:

- (1) The Lender should refund
 - a. Mr G'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.
And
 - b. The difference between the trade-in value given to Mr G's trial membership and the capital sum refinanced into the Credit Agreement from the loan taken to pay for the trial membership.
And
 - c. Up until the Time of Upgrade, the annual management charges Mr G paid under FC Membership 1.
And
 - d. After the Time of Upgrade, where Mr G has paid annual management charges under FC Membership 2, an amount equal to the annual management charges Mr G would've paid under FC Membership 1.
- (2) The Lender can deduct:
 - i. The value of any promotional giveaways that Mr G used or took advantage of.
And
 - ii. Before the Time of Upgrade, the market value of the holidays* Mr G took using his FC Membership 1 Fractional Points.
And
 - iii. After the Time of Upgrade, the market value of the holidays* (or relevant proportion thereof) that Mr G took using FC Membership 2 where at least part of that holiday was paid for using Fractional Points that Mr G would've had available under FC Membership 1.

(I'll refer to the output of steps 1 and 2 as the 'Net Repayments' hereafter)
- (3) 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.

- (4) The Lender should remove any adverse information recorded on Mr G's credit file in connection with the Credit Agreement reported within six years of this decision.

*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 G 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.

**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 I've explained, I've decided to uphold this complaint. I direct Mitsubishi HC Capital UK PLC trading as Novuna Personal Finance to pay fair compensation to Mr G as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 5 February 2026.

Phillip Lai-Fang
Ombudsman