

## **The complaint**

Mr W's 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 a claim under Section 75 of the CCA.

## **What happened**

Mr and Mrs W purchased membership of a timeshare (the 'Fractional Club') from a timeshare provider (the 'Supplier') on 25 April 2016. They entered into an agreement with the Supplier to buy 810 fractional points at a cost of £13,929 (the 'Purchase Agreement').

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

Mr and Mrs W paid for their Fractional Club membership by taking finance of £13,929 from the Lender (the 'Credit Agreement') in Mr W's name. As the finance used for the purchase was in Mr W's sole name, only he is eligible to bring this complaint.

Mr and Mrs W upgraded their Fractional Club membership on 10 January 2017, purchasing additional fractional points with finance from the Lender. This purchase is being considered under a separate complaint.

Mr W – using a professional representative (the 'First PR') – wrote to the Lender on 27 May 2021 (the 'Letter of Complaint') to raise a number of different concerns. As those concerns haven't changed since they were first raised, and as both sides are familiar with them, it isn't necessary to repeat them in detail here beyond the summary above.

The Lender dealt with Mr W's concerns as a complaint and issued its final response letter on 9 September 2021, rejecting it on every ground.

The complaint was then referred to the Financial Ombudsman Service. It was assessed by an Investigator who, having considered the information on file, upheld the complaint on its merits.

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

While the complaint was awaiting an Ombudsman's decision, the First PR stopped representing Mr W and a new PR took its place (the 'Second PR').

I considered the matter and issued a provisional decision (the 'PD') dated 19 December 2025. In that decision, I said:

"I have considered all the available evidence and arguments to decide what is 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.

It was said in the Letter of Complaint that Fractional Club membership had been misrepresented by the Supplier at the Time of Sale because Mr W 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 Fractional Club membership was an "investment" when that was not true.

However, 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. After all, a share in an allocated property was, by its very nature, an investment. And while, as I understand it, the sale of the Allocated Property could be postponed in certain circumstances according to the Fractional Club Rules, Mr W says little to nothing to persuade me that he was given a guarantee by the Supplier that the Allocated Property would be sold on a specific date when such a promise would have been impossible to stand by given the inevitable uncertainty of selling property some way into the future. And as there's nothing else on file to support the First PR's allegation, I'm not persuaded that there was a representation by the Supplier on the issue in question that constituted a false statement of fact.

So, while I recognise that Mr W has concerns about the way in which Fractional Club membership was sold by the Supplier, when looking at the claim under Section 75 of the CCA, I can only consider whether there was a factual and material misrepresentation by the Supplier. 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 aspect of the Section 75 claim.

### **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's 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.

Mr W says that he could not holiday where and when he 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.

Yet, like any holiday accommodation, availability was not unlimited – given the higher demand at peak times, like school holidays for instance. Some of the sales paperwork signed by Mr W states that the availability of holidays was/is subject to demand. It also looks like he made use of his fractional points to holiday on a number of occasions. I accept that he may not have been able to take certain holidays. But I have not seen enough to persuade me that the Supplier had breached the terms of the Purchase Agreement.

So, from the evidence I have seen, I do not think the Lender is liable to pay Mr W 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 Section 75 complaint either.

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

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

Having considered the entirety of the credit relationship between Mr W and the Lender along with all the circumstances of the complaint, I don't think the credit relationship between them was likely to have been rendered unfair for the purposes of Section 140A. When coming to that conclusion, and in carrying out my analysis, I have looked at:

1. The standard of the Supplier's commercial conduct – which includes its sales and marketing practices at the Time of Sale along with any relevant training material;
2. The provision of information by the Supplier at the Time of Sale, including the contractual documentation and disclaimers made by the Supplier;
3. The commission arrangements between the Lender and the Supplier at the Time of Sale and the disclosure of those arrangements;
4. Evidence provided by both parties on what was likely to have been said and/or done at the Time of Sale;
5. The inherent probabilities of the sale given its circumstances; and, when relevant
6. Any existing unfairness from a related credit agreement.

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

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

Mr W's complaint about the Lender being party to an unfair credit relationship was

and is made for several reasons.

The First PR said, for instance that:

1. The right checks weren't carried out before the Lender lent to Mr W; and
2. Mr W was 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 W 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 him.

I acknowledge that Mr W may have felt weary after a sales process that went on for a long time. But he says little about what was said and/or done by the Supplier during his sales presentation that made him feel as if he had no choice but to purchase Fractional Club membership when he simply did not want to. He was also given a 14-day cooling off period and has not provided a credible explanation for why he did not cancel his membership during that time. Moreover, he went on to upgrade his membership, which I find difficult to understand if the only reason he went ahead with the purchase in question is because he was pressured into doing so. And with all that being the case, there is insufficient evidence to demonstrate that Mr W made the decision to purchase Fractional Club membership because his ability to exercise that choice was significantly impaired by pressure from the Supplier.

Overall, therefore, I don't think that Mr W'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 he says the credit relationship with the Lender was unfair to him. And that's the suggestion that Fractional Club membership was marketed and sold to him as an investment in breach of a prohibition against selling timeshares in that way.

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

A share in the Allocated Property clearly constituted an investment as it offered Mr W the prospect of a financial return – whether or not, like all investments, that was more than what he first put into it. But it's 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 W 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.

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's 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 W, the financial value of their share in the net sales proceeds of their allocated property along with the investment considerations, risks and rewards attached to it.

But 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 also possible that Fractional Club membership was marketed and sold to Mr W as an investment in breach of Regulation 14(3).

However, whether or not there was a breach of the relevant prohibition by the Supplier is not ultimately determinative of the outcome in this complaint for reasons I will come on to shortly. And with that being the case, it's not necessary to make a formal finding on that particular issue for the purposes of this decision.

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

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

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

Both the First and Second PR have provided statements from Mr and Mrs W containing their recollections of their various interactions with the Supplier. Both statements say that Fractional Club membership was presented to Mr and Mrs W as an investment from which they could make a profit.

But it was only after the judgment in *R (on the application of Shawbrook Bank Ltd) v Financial Ombudsman Service Ltd and R (on the application of Clydesdale Financial Services Ltd (t/a Barclays Partner Finance)) v Financial Ombudsman Service* [2023] EWHC 1069 (Admin) ('*Shawbrook & BPF v FOS*') was handed down, that Mr and Mrs W recalled that the Supplier led them to believe that Fractional Club membership

offered them the prospect of a financial gain. And as experience tells me that, the more time that passes between a complaint and the event complained about, the more risk there is of recollections being vague, inaccurate and/or influenced by discussion with others, I find it difficult to understand why the Financial Ombudsman Service was only given such evidence when it was.

The Letter of Complaint, which was sent prior to the judgment in *Shawbrook & BPF v FOS*, does say that Fractional Club membership was sold to Mr W as an investment. But as the First PR has made similar allegations in a similar fashion on a significant number of complaints, I am not persuaded these were tailored based on individual comments Mr and Mrs W made around the time the Letter of Complaint was sent.

Indeed, as there isn't any other evidence on file to corroborate Mr and Mrs W's very recent evidence about their motivations at the Time of Sale, there seems to me to be a very real risk that their recollections were coloured by the judgment in *Shawbrook & BPF v FOS*. And with that being the case, I'm not persuaded that I can give their written recollections the weight necessary to find that the credit relationship in question was unfair for reasons relating to a breach of the relevant prohibition.

There are also significant differences between the statements which make me feel like I can place little weight on them. For instance, in the statement provided by the Second PR, Mr and Mrs W allege that the sales representative(s) supplied alcohol during the sales process, but there is no mention of this in the statement provided by the First PR. Further, it isn't clear whether the statement provided by the Second PR relates to the Time of Sale I'm considering in this complaint or the sale of the upgrade on 10 January 2017.

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 W's decision to purchase this at the Time of Sale was motivated by the prospect of a financial gain (i.e. a profit). And for that reason, I do not think the credit relationship between Mr W 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 First PR said that Mr W 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 First 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 W 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 W nor his PRs have persuaded me that he was deprived of information that would have led him 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 an unfair credit relationship as a result.

The PR also says that a payment of commission from the Lender to the Supplier at the Time of Sale should lead me to uphold this complaint because, simply put, information in relation to that payment went undisclosed at the Time of Sale.

As both sides already know, the Supreme Court handed down an important judgment on 1 August 2025 in a series of cases concerned with the issue of commission: *Johnson v FirstRand Bank Ltd, Wrench v FirstRand Bank Ltd and Hopcraft v Close Brothers Ltd* [2025] UKSC 33 ('*Hopcraft, Johnson and Wrench*').

The Supreme Court ruled that, in each of the three cases, the commission payments made to car dealers by lenders were legal, as claims for the tort of bribery, or the dishonest assistance of a breach of fiduciary duty, had to be predicated on the car dealer owing a fiduciary duty to the consumer, which the car dealers did not owe. A "disinterested duty", as described in *Wood v Commercial First Business Ltd & ors and Business Mortgage Finance 4 plc v Pengelly* [2021] EWCA Civ 471, is not enough.

However, the Supreme Court held that the credit relationship between the lender and Mr Johnson was unfair under Section 140A of the CCA because of the commission paid by the lender to the car dealer. The main reasons for coming to that conclusion included, amongst other things, the following factors:

1. The size of the commission (as a percentage of the total charge for credit). In Mr Johnson's case it was 55%. This was "so high" and "a powerful indication that the relationship [...] was unfair" (see paragraph 327);
2. The failure to disclose the commission; and
3. The concealment of the commercial tie between the car dealer and the lender.

The Supreme Court also confirmed that the following factors, in what was a non-exhaustive list, will normally be relevant when assessing whether a credit relationship was/is unfair under Section 140A of the CCA:

1. The size of the commission as a proportion of the charge for credit;
2. The way in which commission is calculated (a discretionary commission arrangement, for example, may lead to higher interest rates);
3. The characteristics of the consumer;
4. The extent of any disclosure and the manner of that disclosure (which, insofar as Section 56 of the CCA is engaged, includes any disclosure by a supplier when acting as a broker); and
5. Compliance with the regulatory rules.

From my reading of the Supreme Court's judgment in *Hopcraft, Johnson and Wrench*, it sets out principles which apply to credit brokers other than car dealer credit brokers. So, when considering allegations of undisclosed payments of commission like the one in this complaint, *Hopcraft, Johnson and Wrench* is relevant law that I'm required to consider under Rule 3.6.4 of the FCA's Dispute Resolution rules ('DISP').

But I don't think *Hopcraft, Johnson and Wrench* assists Mr W in arguing that his credit relationship with the Lender was unfair to him for reasons relating to commission given the facts and circumstances of this complaint.

As the Supreme Court said in paragraph 326 of its judgment in *Hopcraft, Johnson*

*and Wrench*, it's not possible to simply apply the reasoning of the Supreme Court in *Plevin v Paragon Personal Finance Ltd* [2014] UKSC 61 ('*Plevin*') to this complaint (as the First PR did) when it's concerned with a product and marketplace that were very different to those in *Plevin*. What's more, Mr W was provided with information as to the price of Fractional Club membership and the cost of the Credit Agreement (interest rate, fees, APR and monthly repayments). So, he was at least in a position from which he could understand the cost of the Credit Agreement and compare it with other options that might have been available at the Time of Sale.

I haven't seen anything to suggest that the Lender and Supplier were tied to one another contractually or commercially in a way that wasn't properly disclosed to Mr W, nor have I seen anything that persuades me that the commission arrangement between them gave the Supplier a choice over the interest rate that led him into a credit agreement that cost disproportionately more than it otherwise could have.

I acknowledge that it's possible that the Lender and the Supplier failed to follow the regulatory guidance in place at the Time of Sale insofar as it was relevant to disclosing the commission arrangements between them. But as I've said before, 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.

And with that being the case, it isn't necessary to make a formal finding on that because, even if the Lender and the Supplier failed to follow the relevant regulatory guidance at the Time of Sale, it's for the reasons set out below that I don't currently think any such failure is itself a reason to find the credit relationship in question unfair to Mr W.

In stark contrast to the facts of Mr Johnson's case, the amount of commission paid by the Lender to the Supplier for arranging the Credit Agreement that Mr W entered into wasn't high. At £345.44, it was only 2.48% of the amount borrowed and only 3.69% as a proportion of the charge for credit. So, had he known at the Time of Sale that the Supplier was going to be paid a flat rate of commission at that level, I'm not currently persuaded that he either wouldn't have understood that or would have otherwise questioned the size of the payment at that time. After all, Mr W wanted Fractional Club membership and had no obvious means of his own to pay for it. And at such a low level, the impact of commission on the cost of the credit he needed for a timeshare he wanted doesn't strike me as disproportionate. So, I think he would still have taken out the loan to fund his purchase at the Time of Sale had the amount of commission been disclosed.

What's more, based on what I've seen so far, the Supplier's role as a credit broker wasn't a separate service and distinct from its role as the seller of timeshares. It was simply a means to an end in the Supplier's overall pursuit of a successful timeshare sale. I can't see that the Supplier gave an undertaking – either expressly or impliedly – to put to one side its commercial interests in pursuit of that goal when arranging the Credit Agreement. And as it wasn't acting as an agent of Mr W but as the supplier of contractual rights he obtained under the Purchase Agreement, the transaction doesn't strike me as one with features that suggest the Supplier had an obligation of 'loyalty' to him when arranging the Credit Agreement and thus a fiduciary duty.

Overall, therefore, I'm not currently persuaded that the commission arrangements between the Supplier and the Lender were likely to have led to a sufficiently extreme inequality of knowledge that rendered the credit relationship unfair to Mr W.

## **Section 140A: conclusion**

Given all the factors I've looked at in this part of my decision, and having taken all of them into account, I'm not persuaded that the credit relationship between Mr W and the Lender under the Credit Agreement and related Purchase Agreement was unfair to him. And as things currently stand, I don't think it would be fair or reasonable that I uphold this complaint on that basis.

## **Commission: the alternative grounds of complaint**

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While I've found that Mr W's credit relationship with the Lender wasn't unfair to him for reasons relating to the commission arrangements between it and the Supplier, two of the grounds on which I came to that conclusion also constitute separate and freestanding complaints to Mr W's complaint about an unfair credit relationship. So, for completeness, I've considered those grounds on that basis here.

The first ground relates to whether the Lender is liable for the dishonest assistance of a breach of fiduciary duty by the Supplier because it took a payment of commission from the Lender without telling Mr W (i.e. secretly). And the second relates to the Lender's compliance with the regulatory guidance in place at the Time of Sale insofar as it was relevant to disclosing the commission arrangements between them.

However, for the reasons I set out above, I'm not persuaded that the Supplier – when acting as credit broker – owed Mr W a fiduciary duty. So, the remedies that might be available at law in relation to the payment of secret commission aren't, in my view, available to him. And while it's possible that the Lender failed to follow the regulatory guidance in place at the Time of Sale insofar as it was relevant to disclosing the commission arrangements between it and the Supplier, I don't think any such failure on the Lender's part is itself a reason to uphold this complaint because, for the reasons I also set out above, I think he would still have taken out the loan to fund his purchase at the Time of Sale had there been more adequate disclosure of the commission arrangements that applied at that time.”

In conclusion, given the facts and circumstances of this complaint, I did not think that the Lender acted unfairly or unreasonably when it dealt with Mr W's Section 75 claim, and I was 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 could see no other reason why it would be fair or reasonable to direct the Lender to compensate him.

The PR responded that it did not accept the PD and provided some further comments and evidence to be considered. The Lender did not respond.

I am now in a position to finalise my 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.

I've considered the case afresh following the responses from the parties. Having done so, I've reached the same decision as that which I outlined in my provisional findings, for broadly the same reasons.

Again, my role as an Ombudsman isn't to address every single point which has been made to date, but to decide what is fair and reasonable in the circumstances of this complaint. If I haven't commented on, or referred to, something that either party has said, this doesn't mean I haven't considered it.

Rather, I've focused here on addressing what I consider to be the key issues in deciding this complaint and explaining the reasons for reaching my final decision.

The Second PR's further comments in response to the PD only relate to the issue of whether the credit relationship between Mr W and the Lender was unfair. In particular, the Second PR has provided further comments in relation to whether the membership was sold to him as an investment at the Time of Sale. It's also provided further comments to support its argument that the payment of commission by the Lender to the Supplier led to an unfair credit relationship.

As outlined in my PD, the PRs originally raised various other points of complaint, all of which I addressed at that time. But the Second PR didn't make any further comments in relation to those in its response to my PD. Indeed, it hasn't said it disagrees with any of my provisional conclusions in relation to those other points. And since I haven't been provided with anything more in respect of those other points by either party, I see no reason to change my conclusions about them as set out in my PD. So, I'll focus here on the Second PR's points raised in response.

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

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

Part of my assessment of Mr and Mrs W's testimony was to consider *when* it was written, and whether it may have been affected by external factors such as the widespread publication of the outcome of *Shawbrook and BPF v FOS*.

I have thought about what the Second PR has said, but I remain of the view that given the timing of Mr and Mrs W's statements, there is a risk that their testimony was coloured by the outcome in *Shawbrook & BPF v FOS*. In my PD, I also highlighted the inconsistencies between the statements provided by the two PRs. And, on balance, the way in which the evidence has been provided makes me conclude that I can place little weight on it.

The PR says that as the Supplier's pricing sheet refers to the "Unit Share %" provided under Mr W's Fractional Club membership, this shows the investment element "played quite an important role" in his purchasing decision. But I don't agree. As I explained in my PD, it's not in dispute that Fractional Club membership contained an investment element and it's possible that it was marketed or sold to Mr W as an investment (although I have made no finding on this). However, the simple fact that his share in the Allocated Property was recorded on the pricing sheet does not offer an insight into his motivation for his purchase.

The PR also said that in the judgment handed down in *Shawbrook & BPF v FOS*, it was not challenged that the product in question was marketed and sold as an investment. But, as I explained in my PD, the Timeshare Regulations did not ban products such as the Fractional Club. They just regulated how such products were marketed and sold. And the judgment referred to did not make a blanket finding that all such products were mis-sold in the way the PR appears to be suggesting. Any complaint needs to be considered in the light of its specific circumstances.

So, even if the Supplier had marketed or sold the membership as an investment in breach of

Regulation 14(3) (which I still make no finding on here), I'm not persuaded Mr W's decision to make the purchase was motivated by the prospect of a financial gain. And for that reason, I still don't think the credit relationship between Mr W and the Lender was unfair to him.

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

In response to my findings on commission in my PD, the Second PR said that in *Hopcraft, Johnson and Wrench*, "the concern was not solely the quantum of the commission, but the lack of transparency and the misleading reality presented to the consumer." It argues that the partially disclosed commission prevented Mr W from making an informed decision and gave rise to an unfair credit relationship.

But as I've said, 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.

And as the amount of commission paid by the Lender to the Supplier was at such a low level, I still think Mr W would have taken out the loan to fund his purchase at the Time of Sale had the amount of commission been disclosed to him. So, I don't find the Second PR's response persuades me to depart from the conclusions I reached in my PD.

### **S140A conclusion**

Given all the factors I've looked at in this part of my decision, and having taken all of them into account, I'm not persuaded that the credit relationship between Mr W and the Lender under the Credit Agreement and related Purchase Agreement was unfair to him. So, I don't think it is fair or reasonable that I uphold this complaint on that basis.

### **Overall conclusion**

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

## **My final decision**

My final decision is to not uphold Mr W's complaint about Mitsubishi HC Capital UK PLC, trading as Novuna Personal Finance, for the reasons provided.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 10 February 2026.

Alex Salton  
**Ombudsman**