

## **The complaint**

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

## **Background to the complaint**

Mrs D, together with her husband Mr D, were members of a timeshare provider (the 'Supplier'), having purchased a number of products from it previously. But the product at the centre of this complaint is their membership of a timeshare that I'll call the 'Signature Collection' – which they bought on 12 August 2019 (the 'Time of Sale'). They entered into an agreement with the Supplier to buy 1,820 fractional points for use on a bi-annual basis at a cost of £24,369 (the 'Purchase Agreement').

Signature Collection membership was asset backed – which meant it gave Mr and Mrs D 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 and Mrs D paid for their Signature Collection membership, in part, by taking a loan of £23,119 from Novuna (the 'Credit Agreement'). They also traded in some of the fractional points held under their existing 'Fractional Club' membership, which was asset backed in a similar way to the Signature Collection.

As only Mrs D was named on the Credit Agreement, only she is able to refer a complaint about it to our Service.

Mrs D – using a professional representative ('PR1') – wrote to Novuna on 5 May 2023 (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.

Novuna dealt with Mrs D's concerns as a complaint and issued its final response letter on 24 December 2024, rejecting it on every ground.

The complaint was then referred to the Financial Ombudsman Service, by which time Mrs D was assisted by a different professional representative ('PR2'). The complaint was assessed by an Investigator, who did not recommend that it be upheld.

As Mrs D disagreed with the Investigator's assessment, the complaint was passed to me to decide.

I considered the matter and issued a provisional decision (the 'PD'). 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 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**

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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. Novuna 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 Signature Collection membership had been misrepresented by the Supplier at the Time of Sale because Mr and Mrs D were:

1. Told that they had purchased an investment that would "considerably appreciate in value" when that was not true.
2. Told that they would own a share in a property that would increase in value during the membership term when that was not true.
3. Told that they could sell their Signature Collection membership back to the Supplier or easily to third parties at a profit.
4. Made to believe that they would have access to "the holiday apartment" at any time all year round.

However, neither points 1 nor 2 strike me as misrepresentations even if such representations had been made by the Supplier (which I make no formal finding on). Telling prospective members that they were investing their money because they were buying a fraction or share of one of the Supplier's properties was not untrue. And even if the Supplier's sales representatives went further and suggested that the share in question would increase in value, perhaps considerably so, that sounds like nothing more than a honestly held opinion as there isn't enough evidence to persuade me that the relevant sales representative(s) said something that, while an opinion, amounted to a statement of fact that they did not hold or could not have reasonably held.

As for points 3 and 4, while it's *possible* that Signature Collection membership was misrepresented at the Time of Sale for either or both of these reasons, I don't think it's *probable*. Neither allegation is given the colour or context I consider necessary to demonstrating that the Supplier made a false statement of existing fact and/or opinion. The documentation that Mr and Mrs D were given (and signed) at the Time of Sale made it clear that the Supplier did not run a "resale" programme. And the paperwork also explained that Mr and Mrs D *did* acquire the right to stay in the Allocated Property – but that this was only at a specified time of the year, on a bi-annual basis. I find it unlikely that the Supplier would've made promises of the type suggested in the Letter of Complaint, which would have been so starkly contradictory to the contractual paperwork and demonstrably false.

So, while I recognise that Mr and Mrs D and their representatives have concerns about the way in which Signature Collection 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 Novuna acted unreasonably or unfairly when it dealt with Mrs D's Section 75 claim.

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

I've already explained why I'm not persuaded that Signature Collection 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 Mrs D and Novuna 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;
4. The inherent probabilities of the sale given its circumstances; and, when relevant
5. Any existing unfairness from a related credit agreement.

I have then considered the impact of these on the fairness of the credit relationship between Mrs D and Novuna.

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

Mrs D's complaint about Novuna being party to an unfair credit relationship was made for several reasons.

PR1 said, for instance, that the right checks weren't carried out before Novuna lent to Mrs D. I haven't seen anything to persuade me that was the case in this complaint given its circumstances. But even if I were to find that Novuna 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 Mrs D was actually unaffordable before also concluding that she lost out as a result and then consider whether the credit relationship with Novuna was unfair to her for this reason. But from the information provided, I am not satisfied that the lending was unaffordable for Mrs D.

Connected to this is the suggestion that the Credit Agreement was arranged by an unauthorised credit broker, the upshot of which is to suggest that Novuna wasn't permitted to enforce the Credit Agreement. However, it looks to me like Mrs D knew, amongst other things, how much she was borrowing and repaying each month, who she was borrowing from and that she was borrowing money to pay for Signature Collection membership. And as the lending doesn't look like it was unaffordable for her, even if the Credit Agreement was arranged by a broker that didn't have the necessary permission to do so (which I make no formal finding on), I can't see why that led to Mrs D suffering a financial loss – such that I can say that the credit relationship in question was unfair on her as a result. And with that being the case, I'm not persuaded that it would be fair or reasonable to tell Novuna to compensate Mrs D, even if the loan wasn't arranged properly.

Overall, therefore, I don't think that Mrs D's credit relationship with Novuna was rendered unfair to her under Section 140A for any of the reasons above. But there is another reason, perhaps the main reason, why Mrs D's representatives say the credit relationship with Novuna was unfair to her. And that's the suggestion that Signature Collection membership was marketed and sold to her as an investment in breach of prohibition against selling timeshares in that way.

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

Novuna does not dispute, and I am satisfied, that Mr and Mrs D's Signature Collection 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 Signature Collection 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 Mrs D's representatives say that the Supplier did exactly that at the Time of Sale – saying, in summary, that she and Mr D were told by the Supplier that Signature Collection membership was the type of investment that would only increase in value.

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

A share in the Allocated Property clearly constituted an investment as it offered Mr and Mrs D 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 Signature Collection 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 Signature Collection. They just regulated how such products were marketed and sold.

To conclude, therefore, that Signature Collection membership was marketed or sold to Mr and Mrs D 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 Signature Collection membership offered them the prospect of a financial gain (i.e., a profit) given the facts and circumstances of *this* complaint.

There is competing evidence in this complaint as to whether Signature Collection 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 Signature Collection as an 'investment' or quantifying to prospective purchasers, such as Mr and Mrs D, 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 Signature Collection membership as an investment. So, I accept that it's equally possible that Signature Collection membership was marketed and sold to Mr and Mrs D 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 Novuna and Mrs D have been rendered unfair to her had there been a breach of Regulation 14(3) of the Timeshare Regulations?

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

To help me decide this point, I've carefully considered what Mr and Mrs D have said in the course of their complaint about how the membership was sold to them and their motivation for purchasing it.

Within the Letter of Complaint, it was said that Mr and Mrs D were told that they had purchased an investment and could expect a profit. There was no further detail underpinning these statements within the Letter of Complaint, which are rather generic in nature. In fact, such assertions are made in an identical fashion by PR1 in a number of other complaints.

When referring the complaint to us, PR2 included a statement made by Mr and Mrs D in their own words and within which they set out their recollections of their purchase from the Supplier. In its response to our Investigator's assessment, PR2 highlights that within this Mr and Mrs D said:

*"Among the benefits explained to us included ... At the end of the contract we would be able to sell back or re sell the fractional percentage for a higher value than we had invested, subsequently returning a profit on our investment. It was explained to us that [the Supplier] had never had a 'fractional' sold back that hadn't returned a profit. This was the main point that made the purchase so appealing as we saw it as a guaranteed investment."*

So Mr and Mrs D themselves do allege both that the Supplier sold Signature Collection membership as an investment opportunity to them and that this was a motivating factor in their decision to purchase it.

However, reading Mr and Mrs D's statement as a whole, there is very little detail underpinning these assertions such as, for example, what the "higher value" or "guaranteed" profit was supposed to have been.

Mr and Mrs D purchased several products from the Supplier – and have submitted the same statement in respect of each sale. And significantly in regard to the point at issue here, Mr and Mrs D do not differentiate between their decisions to purchase different products at different times when setting out what their motivation for proceeding was – when they would surely have had different things to weigh up at each juncture.

Mr and Mrs D already held two memberships with the Supplier at the Time of Sale – another bi-annual Signature Collection membership, and a Fractional Club membership (which was asset backed in a similar way to the Signature Collection, giving them a share of the net sale proceeds of sale of a specified property). They traded in the remainder of the points held under the latter to fund the purchase of this second Signature Collection, holding two bi-annual memberships on alternating years with each giving them access to a different Allocated Property.

This is quite a specific arrangement but Mr and Mrs D do not say, for example, that they were drawn to the prospect of investing in a higher value property or that they thought this upgrade would generate them a better return – as I might expect if it was the investment element of the membership that was a material factor in their decision. I note that they went on to hold a *lower* share in the Allocated Property (1.17%) and a lower share across their two Signature Collection memberships in all (2.45%) than they did under their pre-existing Fractional Club membership (4.34%) – which does not, at least at face value, corroborate the suggestion that the investment was a material factor in their decision.

Ultimately, I do not feel able to place much weight on Mr and Mrs D's broad generalisation of all three sales in determining what happened at the Time of Sale in question.

I'm also conscious that the Signature Collection offered Mr and Mrs D additional benefits to those of their Fractional Club membership, most notably by way of a higher standard of accommodation and a preferential right to stay in the Allocated Property. Notes made by the Supplier around the Time of Sale suggest that this was of particular interest to them, recording that they were "*intending to use the week in the sig apt*" – which I can see they went on to do. And notes made by the Supplier in respect of Mr and Mrs D's prior Signature Collection purchase documented a similar intent ahead of that purchase.

Weighing all of this up, I am not persuaded that the prospect of a financial gain from Signature Collection membership was an important and motivating factor when Mr and Mrs D decided to go ahead with their purchase. 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 as Mr and Mrs D themselves don't persuade me that their purchase was motivated by their share in the Allocated Property and the possibility of a profit, I don't think a breach of Regulation 14(3) by the Supplier was likely to have been material to the decision they ultimately made.

On balance, therefore, even if the Supplier had marketed or sold the Signature Collection membership as an investment in breach of Regulation 14(3) of the Timeshare Regulations, I am not persuaded that Mr and Mrs D's decision to purchase Signature Collection 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 whether or not there had been a breach of Regulation 14(3). And for that reason, I do not think the credit relationship between Mrs D and Novuna was unfair to her even if the Supplier had breached Regulation 14(3).

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

PR1 said that Mr and Mrs D were not given sufficient information at the Time of Sale by the Supplier about the ongoing costs of Signature Collection membership. They also said that the contractual terms governing the ongoing costs of membership and the consequences of not meeting those costs were unfair contract terms.

As I've already indicated, the case law on Section 140A makes it clear that it does not automatically follow that regulatory breaches create unfairness for the purposes of the unfair relationship provisions. The extent to which such mistakes render a credit relationship unfair must also be determined according to their impact on the complainant.

I acknowledge that it is also possible that the Supplier did not give Mr and Mrs D sufficient information, in good time, on the various charges they could have been subject to as Signature Collection members in order to satisfy the requirements of Regulation 12 of the Timeshare Regulations (which was concerned with the provision of 'key information'). But even if that was the case, I cannot see that the ongoing costs of membership were applied unfairly in practice. And as neither Mr and Mrs D nor their representatives have persuaded me that they would not have pressed ahead with their purchase had the finer details of the Signature Collection's ongoing costs been disclosed by the Supplier in compliance with Regulation 12, I cannot see why any failings in that regard are likely to be material to the outcome of this complaint given its fact and circumstances.

As for the argument that there were one or more unfair contract terms in the Purchase Agreement, I can't see that any such terms were operated unfairly against Mr and Mrs D in practice, nor that any such terms led them to behave in a certain way to their detriment. And with that being the case, I'm not persuaded that any of the terms governing Signature Collection membership are likely to have led to an unfairness that warrants a remedy.

In conclusion, given the facts and circumstances of this complaint, I did not think that Novuna acted unfairly or unreasonably when it dealt with Mrs D's Section 75 claim, and I was not persuaded that Novuna was party to a credit relationship with her under the Credit Agreement that was unfair to her 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 Novuna to compensate her.

Novuna did not respond to the PD.

PR2 also responded. It did not accept the PD and provided some further comments it wanted me to take into account.

Having received the relevant responses from both parties, I'm 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 parties, I've considered the case afresh and 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.

PR2's further comments in response to the PD in the main relate to the issue of whether the credit relationship between Mrs D and Novuna was unfair. In particular, PR2 has provided further comments in relation to whether the membership was sold to Mrs D as an investment at the Time of Sale. It has also now argued for the first time that the payment of a commission by Novuna to the Supplier led to an unfair credit relationship.

As outlined in my PD, PR2 originally raised various other points of complaint, all of which I addressed at that time. But it didn't make any further comments in relation to those in their 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 relation to those other points by either party, I see no reason to change my conclusions in relation to them as set out in my PD. So, I'll focus here on PR2's points raised in response.

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

PR2 has highlighted under Section 140B (9) of the CCA, the burden of proof falls on Novuna to disprove the allegation that its relationship with Mrs D was unfair. I agree that this is correct, placing a burden on lenders during the process of litigation. That does not mean, though, that Novuna – or I – should take a claim at face value. There remains an onus on Mrs D to provide some evidence for the claim she is making, despite the overall burden of proof resting with Novuna, as was set out in the judgment in *Smith and another v Royal Bank of Scotland plc* [2023] UKSC 34 at paragraph 40. I also remind both parties that it is my role to make findings on what I consider to be fair and reasonable in all the circumstances of any given complaint.

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

In its response to my PD, PR2 has reasserted its view that the Supplier marketed the Signature Collection membership to Mrs D as an investment and that this was a motivating factor in her decision.

I accepted in my PD that the membership may well have been marketed as an investment to Mrs D in breach of the prohibition in Regulation 14(3) of the Timeshare Regulations. I also explained that while the Supplier's sales processes left open the possibility that the sales representative may have positioned Signature Collection membership as an investment, it wasn't necessary for me to make a finding on this as it is not determinative of the outcome of the complaint. I explained that regulatory breaches do not automatically create unfairness and that such breaches and their consequences (if there are any) must be considered in the round, rather than in a narrow or technical way. PR2's response to my PD hasn't changed my view of this, and so whether the Supplier's breach of Regulation 14(3) led Mrs D to enter into the Purchase Agreement and the Credit Agreement remains an important consideration.

In my PD I explained the reasons why I didn't think any breach of Regulation 14(3) had led Mrs D to proceed with her purchase. In short, I was not persuaded that her decision was motivated by the prospect of a financial gain (i.e., a profit). In reaching that view, I took into account the testimony given by Mrs D in the course of her complaint. I recognise PR2 has interpreted Mrs D's testimony differently to how I have, and I have carefully considered its further comments. Ultimately though, they have not led me to a different conclusion.

So for the reasons given in my PD and above, I still do not think that any breach of Regulation 14(3), if there was one, was material to Mrs D's decision to purchase the Signature Collection membership.

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

PR2 says that a payment of commission from Novuna 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 Financial Conduct Authority's Dispute Resolution Rules ('DISP').

But I don't think *Hopcraft, Johnson and Wrench* assists Mrs D in arguing that her credit relationship with Novuna was unfair to her for reasons relating to commission given the facts and circumstances of this complaint.

I haven't seen anything to suggest that Novuna and Supplier were tied to one another contractually or commercially in a way that wasn't properly disclosed to Mrs D, 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 Mrs D into a credit agreement that cost disproportionately more than it otherwise could have.

I acknowledge that it's possible that Novuna 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 Novuna and the Supplier failed to follow the relevant regulatory guidance at the Time of Sale, it is for the reasons set out below that I don't think any such failure is itself a reason to find the credit relationship in question unfair to Mrs D.

In stark contrast to the facts of Mr Johnson's case, the amount of commission paid by Novuna to the Supplier for arranging the Credit Agreement that Mrs D entered into wasn't high. At £924.76, it was only 4% of the amount borrowed and even less than that (3.7%) as a proportion of the charge for credit. So, had she 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 she either wouldn't have understood that or would have otherwise questioned the size of the payment at that time. After all, Mrs D wanted Signature Collection membership and had no obvious means of her own to pay for it. And at such a low level, the impact of commission on the cost of the credit she needed for a timeshare she wanted doesn't strike me as disproportionate. So, I think she would still have taken out the loan to fund her 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 Mrs D but as the supplier of contractual rights she 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 her when arranging the Credit Agreement and thus a fiduciary duty.

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

#### Section 140A: conclusion

Given all of 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 Mrs D and Novuna under the Credit Agreement and related Purchase Agreement was unfair to her. So, I don't think it is 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 Mrs D's credit relationship with Novuna wasn't unfair to her 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 Mrs D'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 Novuna is liable for the dishonest assistance of a breach of fiduciary duty by the Supplier because it took a payment of commission from Novuna without telling Mrs D (i.e., secretly). And the second relates to Novuna'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 Mrs D 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 her. And while it's possible that Novuna 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 Novuna's part is itself a reason to uphold this complaint because, for the reasons I also set out above, I think she would still have taken out the loan to fund her purchase at the Time of Sale had there been more adequate disclosure of the commission arrangements that applied at that time.

#### **Conclusion**

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In conclusion, given the facts and circumstances of this complaint, I do not think that Novuna acted unfairly or unreasonably when it dealt with Mrs D's Section 75 claim, and I am not persuaded that Novuna was party to a credit relationship with her under the Credit Agreement that was unfair to her 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 Novuna to compensate her.

### **My final decision**

For the reasons set out above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs D to accept or reject my decision before 16 February 2026.

Ben Jennings  
**Ombudsman**