

The complaint

Mr T's complaint is, in essence, that Mitsubishi HC Capital UK PLC trading as Novuna Personal Finance ("Novuna") acted unfairly and unreasonably by (1) declining to meet his claim in misrepresentation under Section 75 of the Consumer Credit Act 1974 ("CCA") and (2) being party to an unfair credit relationship with him under Section 140A of the CCA.

Mr T is assisted in bringing his complaint by a third-party professional representative "PR".

Background to this decision

I recently issued my provisional decision setting out the events leading up to this complaint and my intended conclusions. I've reproduced my provisional decision here and it is incorporated as part of my overall findings. I invited both parties to let me have any further comments they wished to make in response, which I will address later in this decision.

My provisional decision

While on a promotional holiday in March 2016 (the "Time of Sale") Mr T and his wife attended a sales presentation by "C", a timeshare provider. After discussing things with C's representative, Mr and Mrs T purchased membership of C's Fractional Points Owners' Club (the "Fractional Club").

Fractional Club membership was asset backed – which meant it gave Mr and Mrs T more than just holiday rights. It also included a share in the future net sale proceeds of a property (the "Allocated Property") named on Mr and Mrs T's agreement with C (the "Purchase Agreement").

The Purchase Agreement bought Mr and Mrs T 1,040 fractional points, described therein as equivalent to one week of fractional rights, at a cost of £12,521. It was funded by a loan in Mr T's sole name, provided by Hitachi Capital (UK) PLC (the "Credit Agreement"). The lender was subsequently renamed Mitsubishi HC Capital UK PLC and trades as Novuna.

Mr T subsequently authorised a professional representative "PR" to act on his behalf in pursuing a complaint about the arrangements. PR wrote to Novuna on 18 May 2020 (the "Letter of Complaint") to complain about misrepresentations, omissions and unfair sales practices by C at the Time of Sale, including failing to give Mr T important information relevant to his decision to purchase Fractional Club membership and the associated finance.

PR argued that these matters gave rise to an unfair credit relationship between Mr T and Novuna pursuant to section 140A of the CCA. It said that this, as well as the connected lender liability provisions of section 75, made Novuna liable to compensate Mr T. The Letter of Complaint raised several points in relation to C's pre-contractual acts and omissions at the Time of Sale, as well as a post-contractual breach, all of which I've summarised below. These are that:

- C made an untrue statement to Mr T that the purchase would be an investment that would increase in value and that, after a period of a few years, he could sell it at a considerable profit. However, the Fractional Club membership sold to Mr T was a worthless product, without substance.
- C has since ceased trading and thus committed a repudiatory breach of contract.
- C subjected Mr T to a high-pressure presentation to sell him Fractional Club membership.
- C failed to disclose that it would receive commission payment from Novuna, and the amount of such commission, for arranging the finance. C didn't offer him any other finance options. Had Mr T been aware of the commission, he would have looked elsewhere for finance or possibly not entered into the Purchase Agreement at all.
- There was a failure to ensure that C abided by credit industry codes of practice, including that a sound and proper credit assessment was carried out.

Novuna didn't agree with the points raised by PR, rejecting Mr T's complaint in its entirety. So, again with PR's assistance, Mr T referred his complaint to us. It was assessed by an investigator who felt the complaint should be upheld on its merits. She concluded that the circumstances averred in the complaint correspondence were such that they gave rise to an unfair credit relationship between Mr T and Novuna. Our investigator recommended that Novuna compensate Mr T by taking steps designed to put him (as far as reasonably possible) in the position he would have been in had he purchased Fractional Club membership or borrowed the money to do so.

Novuna disagreed with the investigator's assessment. It asked for an ombudsman to review and determine matters. In summary, it said:

- Based on the available evidence the investigator was wrong to conclude that Fractional Club membership was marketed or sold to Mr T as an investment. Although PR asserted this in its complaint submissions, it was not supported by what Mr T had said in his witness statement, which could not be said to be clear and consistent as the investigator had concluded.
- The investigator's assessment was based on a narrow interpretation and misreading of certain of the conclusions reached by the High Court¹ in relation to the marketing and selling of timeshares in the context of The Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010 ("the Timeshare Regulations").
- Mr T was a professional person and could be said to have greater knowledge and financial experience than the average consumer. He had signed contractual documents that expressly set out that Fractional Club membership was not to be viewed as an investment.
- If PR's assertions were to be preferred over the contemporaneous documents, an oral hearing should be held so that it could challenge those assertions.

My provisional findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. I've taken into account relevant law and regulations, regulators' rules, guidance and standards and codes of practice, and

¹ *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)

(where appropriate), what I consider to have been good industry practice at the relevant time.

I also want to make it clear that in making my determination I don't need to address every single point that has been made to date. If I haven't commented on, or referred to, something that either party has said, that doesn't mean I haven't considered it.

Where necessary, I've reached my conclusions on the balance of probabilities; in other words, based on what I think is more likely than not to have happened given the available evidence and the wider circumstances.

Relevant law and regulations

Of particular relevance to this complaint are:

- Relevant Financial Conduct Authority ("FCA") rules and guidance as set out in the FCA Handbook, most notably the Consumer Credit Sourcebook ("CONC")
- The CCA (including section 75 and sections 140A-140C).
- The law on misrepresentation.
- The Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010 ("the Timeshare Regulations").
- The Consumer Rights Act 2015 ("the CRA").
- The Consumer Protection from Unfair Trading Regulations 2008 ("CPUT").
- Case law on Section 140A of the CCA – including, in particular:
 - The Supreme Court's judgment in *Plevin v Paragon Personal Finance Ltd* [2014] UKSC 61 ("*Plevin*"), which remains the leading case in this area.
 - *Scotland v British Credit Trust* [2014] EWCA Civ 790 ("*Scotland and Reast*")
 - *Patel v Patel* [2009] EWHC 3264 (QB) ("*Patel*").
 - The Supreme Court's judgment in *Smith v Royal Bank of Scotland Plc* [2023] UKSC 34 ("*Smith*").
 - *Carney v NM Rothschild & Sons Ltd* [2018] EWHC 958 ("*Carney*").
 - *Kerrigan v Elevate Credit International Ltd* [2020] EWHC 2169 (Comm) ("*Kerrigan*").
 - *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*").

Relevant Guidance – Goode: Consumer Credit Law and Practice

Goode: Consumer Credit Law and Practice is a widely recognised expert commentary on the application of the Consumer Credit Act 1974 and related legislation. It offers relevant guidance to certain of the matters at hand in this complaint.

Good industry practice – the RDO Code

The Timeshare Regulations provided a regulatory framework. But I'm also required to take into account, when appropriate, what I consider to have been good industry practice at the relevant time – which, in this complaint, includes the Resort Development Organisation's Code of Conduct dated 1 January 2010 (the "RDO Code").

What I've provisionally decided – and why

Subject to the issues surrounding the disclosure of commission payments that I'll set out below, I'm currently minded not to uphold Mr T's complaint. I'll explain why.

Section 75 of the CCA

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. For the avoidance of any doubt, I'm satisfied they are met in this case.

The Letter of Complaint said C misrepresented Fractional Club membership at the Time of Sale. The reason given was because Mr and Mrs T were wrongly told or led to believe that Fractional Club membership was an investment that, after a few years, they would be able to sell at a considerable profit. Novuna hasn't accepted that C said this to Mr and Mrs T, and Mr and Mrs T's own evidence in their witness statement makes no such assertion, merely saying "*...at the end of our payments the property would be sold and our share given to us.*"

The evidence submitted doesn't persuade me that C misrepresented Fractional Club membership in the way the Letter of Complaint suggests. And even if the suggestion were that the purchase *could* later be sold for a profit, telling prospective members that the Allocated Property could be sold at a profit was not untrue. After all, a share in an allocated property does, by nature, entertain this possibility.

I'm conscious the PR has suggested C has committed a repudiatory breach of contract, on the basis that it has ceased trading. As I understand it, certain parts of C's business arrangements were restructured as a result of solvency issues. But I've seen nothing to demonstrate that this resulted in Mr and Mrs T no longer being:

- members of the Fractional Club; or
- able to use their Fractional Club membership to holiday in the same way they could initially; or
- entitled to a share in the net sales proceeds of the Allocated Property when their Fractional Club membership ends.

With this in mind, I can't reasonably conclude that Mr T is able to repudiate the Purchase Agreement, or that Novuna is liable to pay him compensation, for a breach of contract by C.

Overall, while I recognise that Mr and Mrs T and the PR have concerns about the way in which Fractional Club membership was sold by C, I'm not satisfied there was a factual and material misrepresentation by C, or that C has breached its contract with Mr T. It follows that I don't think Novuna acted unreasonably or unfairly when it dealt with his section 75 claim.

Section 140A of the CCA

While I've explained why I'm not persuaded that Fractional Club membership was actionably misrepresented by C at the Time of Sale, there are other aspects of the sales process that have been expressed as a cause for Mr T's dissatisfaction. I will explore these with Section 140A in mind.

Under section 140A, a debtor-creditor relationship can be found to have been or be unfair to the debtor because of one or more of the following: the terms of the credit agreement itself; how the creditor exercised or enforced its rights under the agreement; and any other thing done (or not done) by, or on behalf of, the creditor (either before or after the making of the agreement or any related agreement).² Such a finding may also be based on the terms of any related agreement (which here, includes the Purchase Agreement) and, in light of section 56 of the CCA, on anything done or not done by the supplier on the creditor's behalf before the making of the credit agreement or any related agreement.

In this respect the PR says that:

1. the right checks weren't carried out before Novuna lent to Mr T;
2. Mr and Mrs T were pressured by C into purchasing Fractional Club membership at the Time of Sale;
3. Fractional Club membership was marketed and sold as an investment in breach of a prohibition³ on doing so;
4. C didn't offer Mr T any finance options other than Novuna; and
5. C didn't disclose commission it would receive from Novuna for arranging the finance, which was also a breach of its fiduciary duty towards Mr T.

Having considered the entirety of the credit relationship between Mr T and Novuna along with all of the relevant circumstances, I'm not currently minded to conclude that the credit relationship between them was likely to have been rendered unfair for the purposes of Section 140A for any of the reasons set out in 1-3 above. In carrying out my review, I've looked at:

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

I've then considered the impact of these on the fairness of the credit relationship between Mr T and Novuna.

² Section 140A of the CCA

³ Regulation 14(3) of the Timeshare Regulations

Despite the breadth of the unfair credit relationship test under section 140A, it isn't something that arises simply because of a breach of a legal or equitable duty. As the Supreme Court said in *Plevin* (at paragraph 17):

“Section 140A...does not impose any obligation and is not concerned with the question whether the creditor or anyone else is in breach of a duty. It is concerned with...whether the creditor’s relationship with the debtor was unfair.”

Instead, the Supreme Court said in *Plevin* that the protection afforded to debtors by section 140A is the consequence of all of the relevant facts. I've borne this in mind when considering the points Mr T and the PR have made.

Point 1: the lending decision

The PR has said the right affordability checks weren't carried out at the Time of Sale. It has not explained why it believes that to be the case. Novuna disputes the allegation. It says it made checks of Mr T's credit record and validated his income using an appropriate source. It adds that it took account of Mr T's net income, his existing credit commitments and disposable income, again calculated by reference to a recognised source, and that having done all of this, it considered it was appropriate to lend to Mr T. I've no reason to doubt the checks that Novuna undertook, or that in the circumstances they were suitable and proportionate⁴.

Even if I were to find that Novuna (and/or C) failed to do everything it should have when it agreed to lend (and let me be clear, that isn't my finding), I would need to be satisfied that the money lent to Mr T was actually unaffordable in order to conclude that he lost out as a result. Per *Plevin*, if that were the case I could then go on to consider whether Mr T's credit relationship with Novuna was unfair to him for this reason. I'm conscious that no information has been provided to show that the lending was unaffordable for Mr T. In any event, I don't need to consider this in light of what I'm proposing to conclude on the lending assessment.

Points 2 and 3: C's sales and marketing practices at the Time of Sale

I've thought about what the PR has said about Mr and Mrs T being subjected to a high-pressure sales presentation. It describes how they were *“forced to endure a half-day presentation”*. But neither the PR nor Mr T have said anything else about what was said and/or done by C during the sales presentation that made Mr T and his wife feel as if they had no choice but to purchase Fractional Club membership when they simply didn't want to.

Their statement only says they attended the presentation (presumably of their own volition) on the suggestion of a friend. They were also given a 14-day cooling off period, and there's nothing to suggest they sought to cancel their membership during that time, as I might expect to see had they signed up as a result of pressure on the day.

In my view, there is insufficient evidence to demonstrate that Mr and Mrs T made the decision to purchase Fractional Club membership because their ability to exercise that choice was significantly impaired by pressure from C.

I turn now to the alleged breach by C of Regulation 14(3) of the Timeshare Regulations. Novuna does not dispute, and I am satisfied, that Mr and Mrs T's Fractional Club membership met the definition of a “timeshare contract” and was a “regulated contract” for the purposes of the Timeshare Regulations.

⁴ In accordance with the relevant requirements at the Time of Sale, e.g. CONC 5.2

Regulation 14(3) of the Timeshare Regulations prohibited C 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.”

The PR says that is what C did at the Time of Sale in saying that the purchase would be an investment that would increase in value and that, after a period of a few years, Mr T could sell it at a considerable 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 authorities⁵, I will define an investment as being 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 the prospect of a financial gain or profit – even if this ultimately didn’t come to fruition. But the fact that Fractional Club membership by nature contained that 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 find there was a breach of Regulation 14(3), I must be satisfied that C more likely than not marketed and/or sold membership to Mr and Mrs T as an investment. That is, it told them or led them to believe that Fractional Club membership offered them the prospect of a financial gain (a profit) given the facts and circumstances of *this* complaint.

The evidence in this complaint as to whether Fractional Club membership was marketed and/or sold by C as an investment is, I believe, less than conclusive. On the one hand, it is clear from the documents that C made efforts to avoid specifically describing membership of the Fractional Club as an ‘investment’ or quantifying to prospective purchasers, such as Mr and Mrs T, 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, C’s sales process left open the possibility that the sales representative may have positioned Fractional Club membership as an investment. So, I also accept that it’s possible that Fractional Club membership was marketed and sold to Mr and Mrs T as an investment in breach of Regulation 14(3).

However, I must again return to the point made in *Plevin*, which makes 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. So whether there was a breach of the relevant prohibition by C is not ultimately determinative of an unfair credit relationship. Rather, it is a factor that might – depending on other circumstances – lead to that

⁵ *Shawbrook & BPF v FOS*

position.

So rather than making a formal finding on this particular issue at this point, I've gone on to consider whether, if there was a breach of Regulation 14(3), that was what led Mr and Mrs T to enter into the Purchase Agreement (and Mr T into the Credit Agreement).

In its complaint submissions the PR referred to a comprehensive witness statement provided by Mr and Mrs T. When we asked the PR to supply the statement it received from Mr and Mrs T, it provided the following, which I reproduce here in its entirety:

"A friend of my [sic] went on a holiday with C and came to inform us about the holiday home investment with the company. We agreed to be introduced to the club and received an invitation after paying a certain amount of the flight ticket to Spain.

Upon arrival we were met by one of the Holiday consultants [name redacted]. He invited us to a sales presentation on the following day. On the day they presented to us the properties in which our fractional purchase is located and how much shares we have in the property. We were also informed that we can sell the timeshare if we cannot use it in any year and at the end of our payments the property would be sold and our share given to us.

Unfortunately we have not been able to sell the time nor the property to anyone even after advertising it with their preferred vendor."

In my view, what Mr and Mrs T have said falls some way short of persuasive evidence that the prospect of a financial gain from Fractional Club membership was an important and motivating factor when they decided to go ahead with the purchase. That doesn't mean they weren't interested in a share in the Allocated Property. But the idea of it being an investment appears to have been sparked by a conversation with their friend, rather than due to the way it was marketed and/or sold by C. Mr and Mrs T themselves haven't in their witness statement made any mention of a profit, prospective or otherwise.

So whether or not C marketed or sold the Fractional Club membership as an investment in breach of Regulation 14(3) of the Timeshare Regulations, I'm not persuaded that the available evidence allows me to find that Mr and Mrs T's decision to purchase Fractional Club membership at the Time of Sale was motivated by the prospect of a financial gain (that is, a profit). I've no reason to think they would not have pressed ahead with their purchase irrespective of any breach of Regulation 14(3). Because of this, I can't agree that this aspect of the complaint caused the credit relationship between Mr T and Novuna to be unfair to him.

Overall, therefore, I don't currently think that Mr T's credit relationship with Novuna was rendered unfair to him under Section 140A based on any of the reasons in points 1-3.

Point 4: choice of lender

Turning to the suggestion that an unfair credit relationship arises from a failure by C to offer Mr T a choice of lender. I've already noted the provisions that mean Novuna might bear responsibility for acts or omissions on C's part. But in isolation, I can't quite see the point the PR is seeking to make here. It hasn't pointed to any legal or regulatory obligation that C had to offer a choice of lender. It's possible, though, that in the context of the claims relating to commission (non-disclosure and the allegation of a breach of fiduciary duty), the question of whether those matters influenced C's placing the loan with Novuna could have a bearing. So I think it's appropriate that I deal with points 4 and 5 together.

Point 5: Mr T's complaint about commission

Mr T's other expressed concerns relate to alleged payments of commission by Novuna to C for acting as a credit broker and arranging the Credit Agreement.

The Supreme Court's recent judgment *Johnson v FirstRand Bank Ltd, Wrench v FirstRand Bank Ltd and Hopcraft v Close Brothers Ltd* [2025] UKSC 33 ("*Johnson, Wrench and Hopcraft*") clarified the law on payments of commission – albeit in the context of car dealers acting as credit brokers. In my view, the Supreme Court's judgment sets out principles which appear capable of applying to credit brokers other than car dealer-credit brokers.

At present, I consider that I need to know more about the relevant arrangements in place at the Time of Sale. So, once I know more, I will provide my findings on this aspect of the complaint, including any bearing it had on C's decision to place the loan with Novuna.

Conclusion

In conclusion, as things currently stand, I do not think that Novuna acted unfairly or unreasonably when it dealt with the relevant Section 75 claim(s), and if I put the issue of commission to one side for the time being, I am not persuaded that Novuna was party to a credit relationship with Mr T under the Credit Agreement that was unfair to him for the purposes of Section 140A of the CCA – nor do I see any other reason why it would be fair or reasonable to direct Novuna to compensate him.

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

Responses to my provisional decision

Novuna accepted my proposed outcome. The PR disagreed with my overall conclusions. It provided lengthy submissions in response, but has since resubmitted more concise submissions. These are primarily concerned with the undisclosed payment of commission between Novuna and C, and with the suggestion that Mr T's Fractional Club membership was marketed and/or sold as an investment in contravention of a prohibition on selling timeshares in that way.

The PR also repeated allegations of fraudulent misrepresentation, saying Mr T was told by C at the Time of Sale that Fractional Club membership was an investment that would increase in value and could be sold at a considerable profit. He was buying part ownership of a physical property, and when this was sold he'd receive a share of the net sales proceeds of sale. He has received no title or trust deed and has ended up with a worthless product.

The Legal and Regulatory Context

The legal and regulatory context relevant to this complaint has been shared in several hundred published decisions on very similar complaints, as well as in my previous correspondence with the parties.

There's no need for me to set this out again in detail here. I simply remind the parties that our rules⁶ say that in considering what is fair and reasonable in all the circumstances of the complaint, I will take into account: relevant (i) law and regulations; (ii) regulators' rules, guidance and standards; and (iii) codes of practice; and (when appropriate), what I consider to have been good industry practice at the relevant time.

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.

As I said in my provisional decision, my role as an Ombudsman is to decide what's fair and reasonable in the circumstances of this complaint – rather than address every single point that's been made. And with that being the case, while I have read all of the PR's submissions in full, if I have not commented on, or referred to, something that either party has said, that does not mean I have not considered it.

Having reviewed all that's been said and provided, I'm not persuaded to depart from my provisional findings, for reasons I'll explain. Before I do, in light of certain of the PR's comments it's important to make the point that, in contrast to what might happen in court, neither side to this complaint has a burden of proof that it must discharge. I make my findings on the balance of probabilities, in light of the evidence and/or arguments from both sides.

While the PR argues in response to my provisional decision that (under section 140B(9) of the CCA) it is for Novuna to prove that its credit relationship with Mr T wasn't unfair, it is not to be presumed unfair simply because the PR and Mr T make that allegation. Aside from the fact we deal with complaints rather than causes of action, to suggest that unsubstantiated allegations of fact must be disproved by the Lender if the credit relationship isn't to be deemed unfair also oversimplifies if not misunderstands the legal position.

As HHJ David Cooke said in paragraph 26 of his judgment on *Promontoria (Henrico) Ltd v. Gurcharn Samra* [2019] EWHC 2327 (Ch):

“...the onus is on [the creditor] to show, to the normal civil standard, that the relationship is not unfair because of any of the reasons set out in s 140A(1)(a)-(c). Whether it is so unfair is a matter for the court's overall judgment having regard to all the relevant circumstances and matters, including matters relating (i.e. personal) to the creditor and debtor. This onus on the claimant does not however mean, in my judgement...that where [the borrower alleging an unfair credit relationship] makes allegations of fact on which he relies he does not have the burden of proving them to the normal civil standard. The onus

⁶ Specifically Rule 3.6.4 in the Dispute Resolution Rules found in the Financial Conduct Authority's Handbook for Rules and Guidance.

*placed on the creditor is as to the relationship between it and the debtor, and does not have the effect that factual allegations made by Mr Samra must be accepted unless they can be positively disproved by contrary evidence.*⁷

In respect of the claims made under section 75, Novuna's lending decision, whether the sale was conducted with undue pressure, and Mr T not being given a choice of lender, I haven't been provided with new arguments and/or evidence to consider. I see no reason to change or add to the proposed findings (as set out in my provisional decision above) in relation to those points, and adopt my provisional findings on them as part of this final decision.

I now turn to the points the PR *has* sought to make in its revised submissions in response to my provisional decision. For ease of reference I've used the same subheadings as the PR.

The original claim

It was argued by the PR, when this complaint was first made, that C misrepresented Fractional Club membership at the Time of the Sale. In response to my provisional decision, the PR maintains the allegations of fraudulent misrepresentation, saying:

- C told Mr T at the Time of Sale that Fractional Club membership was an investment that would increase in value and could be sold at a considerable profit.
- C told Mr T he was buying part ownership of a physical property, and when this was sold he'd receive a share of the net sales proceeds of sale.
- He has received no title or trust deed and Fractional Club membership wasn't worth enough to make Mr T a profit

The PR takes that view because it says the evidence suggests that (1) any rights in the Allocated Property are personal rights rather than the rights of ownership, (2) the Lender hasn't provided any evidence that the Allocated Property exists or that it will sell in the future (making it unlikely that Mr T will receive anything from his share in it) and, (3) by the PR's own calculations, given the initial and ongoing costs of Fractional Club membership, it was never possible to make a profit from the sale of the Allocated Property.

It also cites the judgment of Mrs Justice Collins Rice in *Shawbrook & BPF v FOS* in support, saying that she found that the selling of a timeshare as an investment (in breach of Regulation 14(3) of the Timeshare Regulations) was, itself, sufficient to create an unfair credit relationship.

However, on my reading of *Shawbrook & BPF v FOS*, Mrs Justice Collins Rice didn't find that a breach of Regulation 14(3) of the Timeshare Regulations was "*causative of the legal relations entered into*". She recognised that such a breach was "*conduct that knocks away the central consumer protection safeguard*", but she went on to say that it was the ombudsmen behind the two reviewed decisions who found that such a breach was, given the facts and circumstances of the relevant complaints, causative of the consumers in question purchasing their timeshares and taking out loans to do so.

What's more, the Supreme Court's judgment in *Plevin* makes it clear that regulatory breaches do not automatically create unfairness for the purposes of section 140A. Such breaches and their consequences (if there are any) must be considered in the round, rather than in a narrow or technical way.

⁷ As approved by the Supreme Court in *Smith v. The Royal Bank of Scotland plc* [2023] UKSC 34 – see paragraph 40.

I am also mindful of what HHJ Waksman QC (as he then was) and HHJ Worster had to say in *Carney v NM Rothschild & Sons Ltd* [2018] EWHC 958 ('Carney') and *Kerrigan v Elevate Credit International Ltd* [2020] EWHC 2169 (Comm) ('Kerrigan') (respectively) on causation.

In *Carney*, HHJ Waksman QC said the following in paragraph 51:

"[...] In cases of wrong advice and misrepresentation, it would be odd if any relief could be considered if they did not have at least some material impact on the debtor when deciding whether or not to enter the agreement. [...] in a case like the one before me, if in fact the debtors would have entered into the agreement in any event, this must surely count against a finding of unfair relationship under s140A. [...]"

And in *Kerrigan*, HHJ Worster said this in paragraphs 213 and 214:

*"[...] The terms of section 140A(1) CCA do not impose a requirement of "causation" in the sense that the debtor must show that a breach caused a loss for an award of substantial damages to be made. The focus is on the unfairness of the relationship, and the court's approach to the granting of relief is informed by that, rather than by a demonstration that a particular act caused a particular loss. Section 140A(1) provides only that the court **may** make an order **if** it determines that the relationship is unfair to the debtor. [...]"*

"[...] There is a link between (i) the failings of the creditor which lead to the unfairness in the relationship, (ii) the unfairness itself, and (iii) the relief. It is not to be analysed in the sort of linear terms which arise when considering causation proper. The court is to have regard to all the relevant circumstances when determining whether the relationship is unfair, and the same sort of approach applies when considering what relief is required to remedy that unfairness. [...]"

So it still seems to me that, if I am to conclude that a breach of Regulation 14(3) led to a credit relationship between Mr T and Novuna that was unfair to him and warranted relief as a result, whether C's breach of Regulation 14(3) led Mr T to enter into the Purchase Agreement and the Credit Agreement remains an important consideration.

While noting what the PR says, I must recognise that none of the contractual paperwork made any promises that a profit might be made. Nor is that at any point suggested in Mr T's own account of events. So it's unclear quite where the foundation lies for the PR's allegations in relation to profit or investment potential⁸.

As I said in my provisional decision, C's training material left open the possibility that the sales representative *may* have positioned Fractional Club membership as an investment. So, I accept that it's possible that Fractional Club membership was orally marketed and sold to Mr T as an investment.

But there is so little about what was said, by whom and in what circumstances for the purposes of determining whether representations by C could properly be said to amount to false statements of fact. Even if representations were made, I don't believe there's enough to distinguish factual statements from what might merely have been expressions of honestly held opinions about the likely value of the Allocated Property in the future.

The PR's own calculations might cast some doubt over the likelihood of the Allocated Property being sold at a profit given the initial and ongoing costs of it to Mr T, there isn't enough evidence to persuade me that the relevant sales representative(s) would have

⁸ The PR's revised submissions refer to adducing a fully expanded and detailed witness statement. However, there is nothing in its evidence bundle that is suggestive of any further testimony provided by Mr T.

carried out that sort of calculation at the Time of Sale or (per *Plevin*), that this had any material bearing on Mr T's decision to purchase membership.

And while the PR might question the exact legal mechanism used to give prospective members an interest in allocated properties, that does not change the fact that the shares of members like Mr T were clearly the purchase of a share of the net sale proceeds of a specific property in a specific resort.

The PR also argues that the Supplier breached Regulation 12 of the Timeshare Regulations (which is concerned with the provision of key information) because it failed to provide Mr T with information on the market value of the Allocated Property, title deeds and a proper legal description beyond a basic unit number.

It isn't clear what the PR means by "proper legal description" and has provided no authority for the suggestion the Supplier had to provide Mr T with information on the title deeds of the Allocated Property. What's more, when it comes to the market value of the Allocated Property, I would draw the PR's attention to what Mrs Justice Collins Rice said in paragraphs 106 and 110 of her judgment in *Shawbrook & BPF v FOS*:

"Both ombudsmen rely on the reference in Sch.1 to 'exact nature and content of the rights' as being the basis for perceiving a legal obligation to provide 'value' information. But first, having regard to the high level of specificity in the Schedule, it is obvious that 'value' information is nowhere specified as such. And second, 'exact nature and content of the rights' is clearly intended, in context, to be a fair and objective identification and description of those rights. 'Value' information may possibly be context for, or commentary on, those rights, but the 'exact nature and content of rights' is something different from information which may (or may not) be relevant to how much they might be worth, now or in the future."

"I do not, and do not need to, go so far as to infer from the Regulations a legal prohibition on the provision of valuation information. My conclusion is that there is no legal obligation, derivable from Reg.12 of the Timeshare Regulations, to provide it, and that the ombudsmen's solution is, in its own terms, distinctly problematic for the regulatory framework. It remains my view that the principal legal consumer-protection control over buying and selling fractional ownership timeshares is the Reg.14(3) prohibition. That provision alone makes it hard enough to market a timeshare product containing a bare interest in the proceeds of the deferred sale of real property lawfully, without inviting the fleshing out of the law as positively demanding investor-protection information obligations at the same time." [my emphasis]

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, even if it could be said that C failed to give Mr T sufficient information in good time in order to satisfy the requirements of Regulation 12 of the Timeshare Regulations for some of the reasons the PR gives, neither Mr T nor the PR 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 that could be said to have rendered the credit relationship in question unfair to Mr T.

So as before, I don't see that the PR's latest submissions give me any cause to depart from my provisional conclusions on this point. My finding in this respect is that whether or not C marketed or sold the Fractional Club membership as an investment in breach of Regulation

14(3) of the Timeshare Regulations, the available evidence is not sufficiently persuasive that Mr T's decision to purchase Fractional Club membership at the Time of Sale was motivated by the prospect of a financial gain (that is, a profit). I've no reason to think he and his wife would not have pressed ahead with their purchase irrespective of any breach of Regulation 14(3). It follows that I do not find that this aspect of the complaint caused the credit relationship between Mr T and Novuna to be unfair to him.

Undisclosed commission payments

As noted in my provisional decision, I indicated that I would provide my findings on the issue of commission once I knew more about that given the circumstances of Mr T's complaint. I did that by email on 26 March 2026, explaining that Novuna had submitted that there was no payment of commission to C for arranging Mr T's Credit Agreement. I went on to say that I therefore couldn't see that any of the arguments made around a failure to disclose that fact could possibly succeed, particularly as it couldn't be shown that Mr T would have made a different decision about whether to take out the loan had he known there was no commission.

In light of this, while I've had regard for the PR's submissions in this respect, I have concluded that commission arrangements between C and Novuna were not likely to have led to a scenario that rendered the credit relationship unfair to Mr T.

Conclusion

After careful consideration, my conclusions remain that:

- Mitsubishi HC Capital UK PLC trading as Novuna Personal Finance did not act unfairly or unreasonably when it dealt with Mr T's section 75 claim; and
- I am not persuaded that Mitsubishi HC Capital UK PLC trading as Novuna Personal Finance was party to a credit relationship under the Credit Agreement that was unfair to Mr T 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 for me to direct Novuna to compensate Mr T.

My final decision

For the reasons set out here and in my provisional decision, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 28 April 2026.

Niall Taylor
Ombudsman