

## **The complaint**

Mrs O'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 O, jointly with her husband Mr O, purchased a Fractional Club timeshare membership (the 'Membership') from a timeshare provider (the 'Supplier') in September 2018. Along with holiday rights, the Membership also provided Mr and Mrs O with a share in the net sale proceeds of a designated property at the end of the Membership term.

Mr and Mrs O paid for the Membership with a loan from Novuna, taken in Mrs O's sole name. As Mrs O was the only party to the loan agreement, only she is eligible to refer this complaint to us – and for ease I will therefore only refer to her throughout, even when she and Mr O may have been acting jointly.

In July 2024, Mrs O – using a professional representative (the 'PR') – wrote to Novuna to raise a number of different concerns that, in summary, comprised a claim under Section 140A and Section 75 of the CCA as summarised above.

Novuna dealt with Mrs O's concerns as a complaint, rejecting it on every ground. So the PR, on Mrs O's behalf, referred the complaint to us. It was assessed by an Investigator who did not recommend that it be upheld, saying – in summary, that:

- The evidence didn't suggest that the Supplier was likely to have made factual statements that, having been untrue, enticed Mrs O into purchasing the Membership. There was therefore no actionable representation, so it was fair for Novuna to have declined Mrs O's claim under Section 75.
- No unfairness had arisen within Mrs O's credit relationship with Novuna such that any compensation was warranted. While accepting that there may have been some shortcomings in how the Supplier sold the Membership to Mrs O, these hadn't prejudiced her position or led her to act any differently than she otherwise would have done.

The PR disagreed with the Investigator's assessment and asked that an Ombudsman review the complaint, so it was passed to me to decide.

## **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.

### **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.

#### Mrs O’s Section 75 claim

The PR said that when selling the Membership to Mrs O, the Supplier led her to believe that she:

- had purchased an investment which would appreciate in value,
- would have a share of a property and its value would increase during the term of the agreement, and
- would have access to the holiday apartments at any time all around the year.

Neither of the first two points strike me as misrepresentations, even had they been made by the Supplier. 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 it was suggested that the share in question would increase in value, that sounds like nothing more than an honestly held opinion.

As for the third point, the contractual paperwork was clear that no such right existed and I find it highly unlikely that the Supplier would’ve contradicted a key term of the agreement in such blatant fashion. And as there isn’t any other evidence on file to support the suggestion that the Membership was misrepresented for that reason – notably Mrs O does not refer to this in her own comments – I don’t think it was.

So I don’t think Novuna acted unreasonably or unfairly when declining Mrs O’s Section 75 claim.

#### The fairness of Mrs O’s credit relationship with Novuna

I should start by saying that I have noted the PR’s point in response to our Investigator’s view that under Section 140B(9) of the CCA, the burden of proof falls on Novuna to disprove the allegation that its relationship with Mrs O 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 O to provide some evidence for the claim she’s making, despite the overall burden of proof resting with Novuna<sup>1</sup>. Also, my role is to make findings on what I consider to be fair and reasonable in all the circumstances of any given complaint.

When initially raising the complaint, the PR raised a number of issues that it considered to have given rise to unfairness within Mrs O’s credit relationship with Novuna. All of these were considered and addressed by our Investigator, with the PR’s rejection of his assessment based only on the question of whether the Supplier sold the Membership to Mrs O as an investment and the impact this had on his decision to purchase it.

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<sup>1</sup> As was set out in the judgment in *Smith and another v Royal Bank of Scotland plc* [2023] UKSC 34 at paragraph 40.

Given that I have reached the same conclusion as our Investigator for much the same reasons, and in keeping with our remit as a quick and informal dispute resolution service, I've focused this written summary of my findings on the points that the PR has raised in its appeal. But I should reassure the parties that I have reviewed the whole complaint afresh in finding, like our Investigator, that:

- Even if Novuna failed to do everything it should have when it agreed to lend to Mrs O as alleged by the PR, I can't see that the loan was actually unaffordable for her.
- Even if the loan 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 that caused Mrs O any harm. She knew, amongst other things, how much she was borrowing and repaying each month, and that she was borrowing from Novuna to pay for the Membership. And, as above, it doesn't look like the loan was unaffordable for her.
- It's possible that the Supplier didn't give Mrs O sufficient information about the various charges she could have been subject to under the terms of the Membership. But I don't think this prejudiced Mrs O's position, as I think she would still have chosen to purchase the Membership even if it had. I've also not seen that the ongoing costs of the Membership have been applied unfairly in practice.
- Accepting the possibility that one or more of the contract terms in Mrs O's agreement with the Supplier could be classed as unfair under the relevant legislation, I've not seen that any such terms have been operated unfairly against Mrs O in practice, nor that any such terms led her to behave in a certain way to her detriment.
- While Novuna and the Supplier may not have properly disclosed to Mrs O the commission arrangements between them, I don't think this caused any unfairness in the credit relationship between them. Given the amount of the commission, the impact of it on the cost of the credit Mrs O needed for a timeshare she wanted doesn't strike me as disproportionate. With no obvious means of her own to pay for it, I think she would still have taken out the loan to fund her purchase even if she had known that the Supplier was going to be paid a flat rate of commission at that level. And I'm not persuaded that the Supplier – when acting as credit broker – owed Mrs O a fiduciary duty.

So I don't think that Mrs O's credit relationship with Novuna was rendered unfair to her under Section 140A for any of the reasons above.

Turning to the matters raised in the PR's response to our Investigator's view, it maintains that the Supplier sold the Membership to Mrs O as an investment in breach of the prohibition against selling timeshares in that way<sup>2</sup> – indeed much of its response is devoted to this allegation. I accept, as our Investigator did, that the Membership might have been marketed as an investment to Mrs O. But regulatory breaches do not automatically create unfairness and such breaches and their consequences – if there are any – must be considered in the round, rather than in a narrow or technical way. So it isn't necessary for me to make a finding on this as it isn't determinative of the outcome of the complaint.

Rather I have to consider whether any such breach had a material impact on Mrs O's decision to purchase the Membership. In other words, whether it led her to do so – and take out the loan with Novuna – when she would otherwise not have done. And having considered all the available evidence, I'm not persuaded that it did.

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<sup>2</sup> Regulation 14(3) of the Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010

The PR primarily bases its claim in this respect upon the statement Mrs O provided in her own words. And I've carefully considered what she said. But this doesn't persuade me that she was motivated to purchase the Membership by the prospect of a profit<sup>3</sup>.

The statement as a whole is brief, comprising just four sentences, and does not, in my view, set out in sufficient detail any meaningful recollections about either what Mrs O was told by the Supplier or what motivated her to purchase the Membership at issue. In fact, Mrs O's recollections of the sale at issue are limited to the following:

*"We attended a meeting in 2018 and were talked into purchasing another package which was done through Novuna finance company."*

Mrs O goes on to describe "*further fractional purchases*" from 2019 onward, comments which the PR cites in its response to our Investigator's view given her reference to being told she could "*sell in the future[,] making money*". Not being attributed to the 2018 purchase at issue, these comments aren't relevant to my consideration of this complaint. In any case, I find them to be rather limited and not particularly instructive as to what Mrs O's motivations were.

I'm also conscious that the statement was provided some five years after the Time of Sale, increasing the risk of inaccuracies and – more significantly here – influence by subsequent events and/or discussions with others. This is particularly relevant given the timing of the statement – being provided as it was after the influential judgment on *Shawbrook & BPF v FOS*<sup>4</sup>.

Bearing in mind the obvious attraction of the holiday options offered by the Supplier – in which Mrs O evidently had an existing interest given she was upgrading from a trial membership when purchasing the product at issue – I think it more likely than not that Mrs O would always have pressed ahead with her purchase even if the Supplier marketed the Membership to her as an investment.

Taking all of this into account, I don't think Novuna was party to a credit relationship with Mrs O that was unfair to her for the purposes of Section 140A of the CCA.

### **My final decision**

For the reasons I've explained, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs O to accept or reject my decision before 10 March 2026.

Ben Jennings  
**Ombudsman**

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<sup>3</sup> 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.

<sup>4</sup> 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)