DRN-6232130

Financial Ombudsman Service

The complaint

Mr H has complained that Mitsubishi HC Capital UK Plc trading as Novuna Personal Finance ('Novuna') hasn't paid a claim he made under section 75 of the Consumer Credit Act 1974 ('CCA'). And he says his creditor-debtor relationship with Novuna was unfair to him under section 140A of the CCA.

What happened

In August 2017, Mr and Mrs H purchased a timeshare membership – which I'll call 'Fractional Club membership' – from a timeshare provider (the 'Supplier'). The membership was asset backed – which means it gave Mr and Mrs H more than just holiday rights. It included a share of the net sale proceeds of a property named on the purchase agreement (the 'Allocated Property') after the membership term ended. It cost £13,910. Mr H borrowed the full amount from Novuna to pay for it.

In January 2021, Mr H – using a professional representative ('PR') – wrote to Novuna (the 'Letter of Claim') to make a claim under sections 75 and 140A of the CCA. Specifically, the Letter of Claim said:

- The way the Supplier sold the Fractional Club membership to Mr and Mrs H was prohibited by the Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010 (the 'Timeshare Regulations').
- Mr and Mrs H were subject to an oppressive, high-pressure sale.
- When Mr and Mrs H tried to dispose of the membership, the Supplier attempted to sell them other products, which the PR says is 'predatory and clearly unfair'.
- Mr H was offered a credit product prohibited by his faith.
- The Supplier misrepresented the membership by saying: it was an investment; maintenance fees would remain 'steady'; there would be no issue with availability; the resort was exclusive; and, it had a right to sell fractional ownership of a property it had no title to.
- As the Supplier is now insolvent and doesn't own the properties, the Allocated Property won't be sold at the end of the membership term.

The PR also requested details of any commission paid by Novuna to the Supplier.

When Novuna didn't provide a substantive response, the PR referred the complaint to our service.

One of our investigators rejected the complaint on its merits.

Mr H's PR has asked that an ombudsman make a final decision. It reiterated that the Fractional Club membership was sold as an investment in breach of Regulation 14(3) of the Timeshare Regulations.

I issued a provisional decision on 25 February 2026, which explained why I didn't intend to uphold this complaint. It included the following provisional findings:

Section 75

Section 75 of the CCA protects consumers who buy goods and services on credit. It says, if certain conditions are met, that the finance provider is legally answerable for any misrepresentation or breach of contract by the supplier. A misrepresentation is an untrue statement made by one party to another that induces that party to enter into a contract.

In the Letter of Claim, the PR says the Supplier mispresented the Fractional Club membership.

While it hasn't provided any first-hand testimony from Mr or Mrs H, or any other evidence to support the allegations, the PR has provided evidence to show that Mr H reviewed and amended part of the Letter of Claim before it was sent.

Where Mr H proposed a change, especially when he's made a significant or material change, I've treated those parts of the Letter of Claim in the same way I would a witness statement.

Of the alleged misrepresentations, Mr H only really amended it in relation to the availability of accommodation. He included two occasions when he says he tried to book accommodation and was told that there was no availability, even though a popular online travel agent showed availability. Mr H says he contacted the Supplier on each occasion to complain, and he was able to book the accommodation he wanted. While Mr H has provided these examples, and the Letter of Claim includes a general statement that he had 'considerable problems with availability', the part of the Letter of Claim that Mr H amended doesn't say he was told 'there would be no issues with availability' as subsequently alleged. So even if there were problems with availability – which, based on what Mr H has said, the Supplier was able to rectify – I've seen no evidence of a misrepresentation by the Supplier about availability.

Similarly, the part of the Letter of Claim that Mr H reviewed and amended makes no mention of 'maintenance fees' – still less does it say he was told they would 'remain steady' as later alleged. What's more, the PR hasn't provided any evidence to show that they haven't.

And while Mr H made minor amendments in relation to the claim that they were told the Supplier's resorts were exclusive, it's still little more than a bare allegation. In the circumstances, I've simply seen insufficient evidence to conclude that the Supplier mispresented the membership in this way.

I'll address the allegation that the Supplier told Mr and Mrs H that the Fractional Club membership was an investment below.

Finally, I understand the Supplier has closed its sales division, but it shouldn't affect Mr and Mrs H's ability to book holidays, and Mr and Mrs H haven't provided any evidence to show that it has or that they've otherwise been unable to use a service they're entitled to under the contract. What's more, the freehold in the Allocated Property is vested in a trustee for the benefit of the fractional owners. It is the trustee's responsibility to preserve the property, and in due course market it for sale, and distribute the proceeds. I haven't seen any evidence that the Supplier didn't have the right to sell Mr and Mrs H a fractional ownership – which is an interest under a trust for a deferred sale. And, as the membership term hasn't ended, any claim for breach of contract on the basis that the Allocate Property may not be sold is speculative and premature.

Based on what I've seen so far, I'm not persuaded that there was a misrepresentation or breach of contract by the Supplier for which Novuna is legally answerable. It follows that I

don't think it was unfair that Novuna didn't pay the claim under section 75.

Section 140A

Section 140A says a court may make an order if it thinks the relationship between a creditor and a debtor is unfair to the debtor. It's deliberately framed in wide terms, and a finding of unfairness can flow from something done on the creditor's behalf in connection with a 'related agreement'. Here, the purchase agreement is a 'related agreement'. And, by virtue of section 56 of the CCA, Novuna is legally answerable for the Supplier's actions.

Having considered the entirety of the relationship, I don't think it was unfair for the purposes of section 140A. In reaching this conclusion, I've considered:

(1) The standard of the Supplier's commercial conduct, which includes its sales and marketing practices at the time of sale, and any relevant training material.
(2) The information provided by the Supplier at the time of sale, including the contracts and any disclaimers made by the Supplier.
(3) The commission arrangements between Novuna and the Supplier at the time of sale and the disclosure of those arrangements.
(4) All the evidence provided by both parties on what was supposedly said and/or done at the time of sale.
(5) The inherent probabilities of what's likely to have happened given the circumstances of each sale.

The Supplier's sales and marketing practices at the time of sale

There are several reasons why Mr H says his creditor-debtor relationship with Novuna was unfair to him.

The PR says Mr and Mrs H were subject to an oppressive, high-pressure sale. The part of the Letter of Claim that Mr H amended doesn't say in what way the sale was 'oppressive' or 'high-pressure'. It does, however, say:

> *'By 3pm the children were understandably making a fuss and…[Mr and Mrs H] were allowed to leave. They were however, further pressured to sign the contracts and, later that day, did agree to purchased the Fractional [Club] membership.'*

It doesn't say how they were 'further pressured' or by whom. Simply put, I've seen insufficient evidence to conclude that Mr and Mrs H only purchased the timeshare membership because their ability to exercise choice was significantly impaired by pressure from the Supplier.

I don't think it was unfair for the Supplier to offer to arrange an interest-bearing loan for Mr H. A person's faith is deeply personal, and it is for each of us to act in accordance with our own faith.

And even if the Supplier did attempt to sell Mr and Mrs H other products when they tried to dispose of the membership (which I make no formal finding on), I can't see how it would render Mr H's relationship with Novuna unfair under section 140A.

Overall, therefore, I don't think that Mr H's credit relationship with Novuna was rendered unfair to him under section 140A for any of the reasons above. However, the PR also argued that the membership was sold and/or marketed as an investment in breach of Regulation 14(3) of the Timeshare Regulations, and that this renders the relationship unfair under section 140A. The PR focused on this point in particular in response to our Investigator's

assessment.

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

I'm satisfied that the Fractional Club membership meets the definition of a 'timeshare contract' and is a 'regulated contract' for the purposes of the Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010 (the 'Timeshare Regulations').

Regulation 14(3) of the Timeshare Regulations says a supplier must not market or sell a proposed timeshare contract as an investment.

The term 'investment' isn't defined in the Timeshare Regulations. But I'll adopt the same definition that was used in R (on the application of Shawbrook Bank Ltd) v Financial Ombudsman Service Ltd *[2023] EWHC 1069 (Admin)* ('Shawbrook v Financial Ombudsman Service')*, which says it's a transaction in which money or other property is laid out in the expectation or hope of financial gain or profit.*

The Fractional Club membership clearly included an investment component in that Mr and Mrs H's share of the proceeds of the deferred sale offered the prospect of a financial return – whether or not, like all investments, that return was more, less or the same as the sum invested. But it's important to note that the fact that the Fractional Club membership included an investment component did not, in itself, transgress the prohibition in Regulation 14(3). Regulation 14(3) prohibits the marketing or selling of a timeshare contract as an investment. It doesn't prohibit the existence of an investment component in a timeshare contract or the marketing and/or selling of such a contract per se. In other words, the Timeshare Regulations didn't ban products like the Fractional Club – they simply regulated how they were marketed and sold.

To conclude, therefore, that the Fractional Club membership was marketed or sold to Mr and Mrs H as an investment in breach of Regulation 14(3), I must 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 Fractional Club membership offered them the prospect of a financial gain (i.e., a profit) given the facts and circumstances of this complaint.

On Mr H's own evidence, I don't think it did. The part of the Letter of Claim that Mr H amended was originally drafted by the PR to say the Supplier told Mr and Mrs H that '…they were investing in bricks and mortar that would be sold at the end of the 19-year period and they would make their money back.' Mr H has amended this to say: '…they were investing in bricks and mortar that would be sold at the end of the 16-year period and they would get some of their money back, after the term' (my emphasis). I'm satisfied that this change reflects Mr H's honest recollections of what he was told at the time and that I can therefore conclude that the Supplier didn't market or sell the Fractional Club membership as an investment on this occasion.

The information provided by the Supplier at the time of sale

The PR says Mr and Mrs H weren't given sufficient information at the time of sale by the Supplier – although it hasn't particularised in what way they weren't given sufficient information.

I accept it's possible that the Supplier didn't give Mr and Mrs H sufficient information, in good time (although I make no formal finding on this point). On the available evidence, I'm not persuaded that Mr and Mrs H wouldn't have purchased the Fractional Club membership if they'd been given more information about it, or that the relationship was unfair because of the information the Supplier did or did not disclose.

Finally, I note that the PR requested details of any commission paid by Novuna to the Supplier and reserved Mr H's position until it received the information. I've therefore considered whether or not the commission payment rendered the credit relationship unfair.

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 held 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 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.*

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

However, I don't think Hopcraft, Johnson and Wrench *leads to me to conclude that Mr H's credit relationship with Novuna was unfair to him for reasons relating to commission given the facts and circumstances of this complaint.*

I haven't seen anything to suggest that Novuna and the Supplier were tied to one another contractually or commercially in a way that wasn't properly disclosed to Mr H, 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 Mr H 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 the case law on section 140A makes it clear that regulatory breaches don't 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 it isn't necessary for me to make a formal finding on this because, even if Novuna and the Supplier failed to follow the relevant regulatory guidance at the time of sale, it's for the reasons set out below that I don't currently think any such failure is itself a reason to conclude that the credit relationship in question is unfair to Mr H.

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 Mr H entered into wasn't high. At £556.40, it was only 4% of the amount borrowed and even less than that as a proportion of the charge for credit. So had he known at the time of sale that the Supplier was going to be paid a flat rate of commission at that level, I'm not currently persuaded that he either wouldn't have understood that or would have otherwise questioned the size of the payment at that time. After all, Mr and Mrs H wanted the Fractional Club membership and had no obvious means of their own to pay for it. And at such a low level, the impact of commission on the cost of the credit they needed for a timeshare they wanted doesn't strike me as disproportionate. So I think Mr H would still have taken out the loan to fund their purchase 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 a timeshare. 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 express or implied – to put to one side its commercial interests in pursuit of that goal when arranging the credit agreement. And as it wasn't acting as an agent of Mr H but as the supplier of contractual rights he obtained under the purchase agreement, the transaction doesn't strike me as one with features that suggest the Supplier had an obligation of 'loyalty' to him when arranging the credit agreement and thus a fiduciary duty.

Overall, I'm currently 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 Mr H.

<u>*Section 140A conclusion*</u>

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

<u>*Commission: alternative grounds*</u>

While I've found that Mr H's credit relationship with Novuna wasn't unfair to him for reasons relating to the commission arrangements between it and the Supplier, two of the grounds on which I came to that conclusion also constitute separate and freestanding complaints to Mr H'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 Mr H (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 Mr H a fiduciary duty. So the remedies that might be available in law in relation to the payment of secret commission aren't, in my view, available to him. 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 he would still have taken out the loan to fund their purchase at the time of sale had there been more adequate disclosure of the commission arrangements that applied at that time.

<u>*Overall conclusion*</u>

In conclusion, given the facts and circumstances of this complaint, I don't think Novuna acted unfairly when it didn't pay Mr H's section 75 claim. And I'm not persuaded that Novuna was party to a credit relationship with him under the credit agreement and related purchase agreement that was unfair to him for the purposes of Section 140A of the CCA. And having taken everything into account, I see no other reason why it would be fair to direct Novuna to compensate Mr H.

I asked both parties to provide any further comments or evidence for me to consider by 11 March 2026.

Novuna says it accepts my provisional decision.

The PR didn't respond at all.

I'm now finalising my decision.

<u>The legal and regulatory context</u>

When considering what is, in my opinion, fair and reasonable in all the circumstances of the complaint, I'm required by DISP 3.6.3R of the Financial Conduct Authority ('FCA') Handbook to take into account:

> '(1) relevant:
>
> (a) law and regulations;
> (b) regulators' rules, guidance and standards;
> (c) codes of practice; and
>
> (2) ([when] appropriate) what [I consider] to have been good industry practice at the relevant time.'

The legal and regulatory context that's relevant to this complaint is, in many ways, no different to that shared in several hundred decisions by ombudsmen on very similar complaints – which can be found on our website. I therefore don't think it's necessary to set out that context in detail here. But I'd add that the following regulatory rules/guidance are also relevant:

- The Consumer Credit Sourcebook (‘CONC’) – also found in the FCA’s Handbook of Rules and Guidance.

  Below are the most relevant provisions and/or guidance as they were at the relevant time:

  - CONC 3.7.3R
  - CONC 4.5.3R
  - CONC 4.5.2G

- 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.

As neither party has provided any further information or evidence, I confirm my provisional findings. My reasons remain the same.

My final decision

For the reasons given, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr H to accept or reject my decision before 14 April 2026.

Christopher Reeves
Ombudsman