DRN-6265204

The complaint

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

What happened

Mr and Mrs S purchased membership of a timeshare (the 'Fractional Club') from a timeshare provider (the 'Supplier') on 31 July 2013 (the 'Time of Sale'). They entered into an agreement with the Supplier to buy 77,500 fractional points at a cost of £10,888[1] (the 'Purchase Agreement'). It's my understanding that as part of this purchase Mr and Mrs S were allowed to cancel, and were successful in cancelling, a non-factional membership they had purchased in 2005.

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

Mr and Mrs S paid for their Fractional Club membership by taking finance of £10,888 from the Lender in Mr S' name (the 'Credit Agreement').

Mr S – using a professional representative (the 'PR') – wrote to the Lender on 24 May 2022 (the 'Letter of Complaint') to raise a number of different concerns. As those concerns haven't changed since they were first raised, and as both sides are familiar with them, it isn't necessary to repeat them in detail here beyond the summary above.

The PR, on behalf of Mr S, referred this complaint to our service on 20 April 2023.

The Lender dealt with Mr S' concerns as a complaint and issued its final response letter on 26 May 2023, rejecting it on every ground.

Mr S' complaint was assessed by an Investigator who, having considered the information on file, upheld the complaint on its merits.

The Investigator thought that the Supplier had marketed and sold Fractional Club membership as an investment to Mr S at the Time of Sale in breach of Regulation 14(3) of the Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010 (the 'Timeshare Regulations'). And given the impact of that breach on his purchasing decision, the Investigator concluded that the credit relationship between the Lender and Mr S was rendered unfair to him for the purposes of section 140A of the CCA.

[1] Inclusive of a £106 fee

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

I considered the matter and issued a provisional decision (the 'PD') on 30 March 2026. In that decision, I said:

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

And having done that, I currently think that this complaint should be upheld because the Supplier breached Regulation 14(3) of the Timeshare Regulations by marketing and/or selling Fractional Membership to Mr S as an investment, which, in the circumstances of this complaint, rendered the credit relationship between him and the Lender unfair to him for the purposes of Section 140A of the CCA.

However, before I explain why, I want to make it clear that my role as an Ombudsman isn't to address every single point that has been made to date. Instead, it's to decide what's fair and reasonable in the circumstances of this complaint. So, while I recognise that there are a number of aspects to Mr S' complaint, it isn't necessary to make formal findings on all of them. That is because, even if those aspects of the complaint ought to succeed, the redress I'm currently proposing puts Mr S in the same or better position than he would be if the redress was limited to those other aspects of the complaint.

What's more, I've made my decision on the balance of probabilities – which means I've based it on what I think is more likely than not to have happened given the available evidence and the wider circumstances.

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

Having considered the entirety of the credit relationship between Mr S and the Lender along with all of the circumstances of the complaint I 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've looked at all the evidence provided from both parties, including:

1. The Supplier's sales and marketing practices at the Time of Sale;
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; and
4. The inherent probabilities of the sale given its circumstances.

I've then considered the impact of the above on the fairness of the credit relationship between Mr S and the Lender.

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

The Lender doesn't dispute, and I'm satisfied, that Mr S' Fractional Club 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 Fractional 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 Mr S says that the Supplier did exactly that at the Time of Sale.

The term "investment" isn't defined in the Timeshare Regulations. In *Shawbrook & BPF v FOS*, the parties agreed that, 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"* at [56]. I will use the same definition.

Mr S' share in the Allocated Property clearly, in my view, constituted an investment as it offered him the prospect of a financial return – whether or not, like all investments, that was more than what he first put into it. But the fact that Fractional Club membership included an investment element did not, itself, transgress the prohibition in Regulation 14(3). That provision prohibits the *marketing and selling* of a timeshare contract as an investment. It doesn't prohibit the mere existence of an investment element in a timeshare contract or prohibit the marketing and selling of such a timeshare contract *per se*.

In other words, the Timeshare Regulations didn't ban products such as Fractional Club membership. They just regulated how such products were marketed and sold.

To conclude, therefore, that Fractional Club membership was marketed or sold to Mr S as an investment in breach of Regulation 14(3), I've to be persuaded that it was more likely than not that the Supplier marketed and/or sold membership to him as an investment, i.e. told him or led him to believe that Fractional Club membership offered him the prospect of a financial gain (i.e., a profit) given the facts and circumstances of *this* complaint.

In a statement dated 26 July 2019 Mr S says:

"This was a pressured sales presentation where the representatives advised us that if we exchanged and upgraded our timeshare product, we would be able to invest in a property that we could sell in 15 years and make a profit from the sale. Additionally, this would allow us to exit from our contract.

On the belief that we would be able to exit our contract in 15 years and leave us with a profit, we purchased and exchanged our 2005 timeshare…for the cost of £10,782.[2]"

The Lender says Mr S' statement fails to provide *"sufficient and reliable detail to substantiate* [his] *Fractional membership with* [the Supplier] *was sold as an investment"* and that it's *"brief, generic and unsupported"*. It also says that it would appear, for various reasons, that the statement was prepared by the PR and not Mr S himself.

It isn't in dispute that Mr S' statement was prepared by the PR. But I don't find this unusual or 'suspicious'. Furthermore, the PR has provided evidence by way of screen shots that it booked a telephone call with Mr S on 24 July 2019 for 26 July 2019 and this call went ahead on 26 July 2019. Therefore I'm satisfied that I can rely on the submitted statement as being a true and accurate reflection of Mr S' memories of the sale in question.

The Lender says that Mr S fails, in his statement, to provide sufficient and reliable detail.

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[2] Net of a £106 fee

The first thing for me to say is that in the light of what I say above I'm satisfied that Mr S' recollections can be taken to be reliable. As for the Lender's submission that Mr S' recollections lack detail, I'm not quite sure what more the Lender might have expected Mr S to say over and above what he did, or what he could have reasonably provided by way of *"contemporaneous"* evidence.

Finally, I don't dispute that Mr S' purchase might have been motivated by the securitisation of a *"future exit from* [his] *existing timeshare"*. But as the Lender is aware what I need to decide in this case isn't whether the prospect of a profit was the only or main motivating factor in Mr S' purchasing decision, but just whether it was a motivation. And based on what Mr S' has said and submitted I'm satisfied that the prospect of a profit was indeed a motivating factor in his purchasing decision even if it wasn't the sole or main motivating one.

There is evidence in this case that the Supplier made efforts to address the possibility that prospective purchasers such as Mr S might view Fractional Club membership as an investment. There were, for instance, disclaimers in the paperwork the Supplier issued to Mr S that says Fractional Club membership shouldn't be regarded as an investment.

Mr S signed these papers to confirm he had received them. But weighing up what happened in practice is in my view rarely as simple as looking at the paperwork, It's by no means clear that Mr S would have read and understood the disclaimers, which were in any event provided after the Supplier's sales presentation and notably, after Mr S made the decision to take out Fractional Club membership. There's little that's been presented in the way of documentary evidence about how the Supplier presented Fractional Club membership. For example, I haven't been provided with any set sales presentations the Supplier confirms were used, or any other key marketing materials.

Mr S has suggested the Supplier breached Regulation 14(3) at the Time of Sale, including expressly telling him that Fractional Club membership was an investment and that there was a profit to be made on his Fractional Club membership. As I say above I find Mr S' evidence in this respect consistent and compelling that it was more likely than not that the way in which Fractional Club membership was sold to him included elements that amounted to marketing it as an investment with the prospect of him making a profit.

I'm inclined to say that the existence of the disclaimers recognises there was a real risk of buyers forming the impression, from the way the Supplier was marketing and selling Fractional Club membership, that it was an investment. The difficulty of articulating the benefit of fractional ownership in a way that distinguished it from Mr S' existing non-fractional membership is a relevant factor in this case. And here, beyond the disclaimers referred to above, I don't have anything from the Supplier or the Lender that shows how that benefit would have been presented to Mr S.

Further, I think it would be fair to say that in light of the allegations Mr S has made about what the Supplier told him, the disclaimer wording in the documents doesn't entirely counter what he says. A prospective member who was told what Mr S says the Supplier told him could easily read the disclaimers in the paperwork without being dissuaded that investment was a legitimate secondary purpose of membership, even if it wasn't the primary purpose.

In conclusion, given the facts and circumstances of this complaint, I thought the Lender participated in and perpetuated an unfair credit relationship with Mr S under the Credit Agreement and related Purchase Agreement for the purposes of section 140A CCA and because of this I thought it was fair and reasonable for me to uphold the complaint. I then set out what I thought the Lender should have to do to compensate Mr S.

The PR responded to my PD to say Mr S accepted it.

The Lender responded to my PD to say it didn't accept it and to reiterate and expand on its previous submissions that even if there had been a breach of Regulation 14(3) of the Timeshare Regulations this was likely to have had no material impact on Mr S' purchasing decision.

Having received the relevant responses from both parties, I'm now finalising my decision.

The legal and regulatory context

In considering what's fair and reasonable in all the circumstances of the complaint, I'm 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 isn't 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.

And having done that, I still think that this complaint should be upheld.

However, before I explain why, I want to reiterate that my role as an Ombudsman isn't to address every single point that has been made. Instead, it's to decide what's fair and reasonable in the circumstances of this complaint.

The Lender submits the evidence doesn't reliably show the Supplier breached Regulation 14(3) of the Timeshare Regulations.

The Lender submits that I placed significant weight on Mr S' account describing it as consistent and compelling yet I acknowledged there was *"no documentary evidence supporting his allegations* [in this respect]*"*.

In my provisional decision I said:

"There's little that's been presented in the way of documentary evidence about how the Supplier presented Fractional Club membership. For example, I haven't been provided with any set sales presentations the Supplier confirms were used, or any other key marketing materials."

And what I meant by this there was little (if anything) from the Supplier by way of documentary evidence to support that it didn't market or sell Fractional Club membership as an investment to Mr S at the Time of Sale in breach of Regulation 14(3) of the Timeshare Regulations not that Mr S had failed to provide documentary evidence that it did. And for the avoidance of doubt I wouldn't expect Mr S to have been able to provide documentary evidence in support of his submission that the Supplier marketed or sold Fractional Club membership to him as an investment.

The Lender submits that it's not unreasonable to have expected Mr S to have said more than he did in his account of the sale. But I remain satisfied that having said…:

"This was a pressured sales presentation where the representatives advised us that if we exchanged and upgraded our timeshare product, we would be able to invest in a property that we could sell in 15 years and make a profit from the sale. Additionally, this would allow us to exit from our contract.

On the belief that we would be able to exit our contract in 15 years and leave us with a profit, we purchased and exchanged our 2005 timeshare…"

Mr S has said enough for me to find that there had been a breach of Regulation 14(3) of the Timeshare Regulations by the Supplier and this breach had a material impact on his purchasing decision.

I don't dispute that Mr S' purchase might have increased his holiday entitlement (compared to what he was entitled to under his previous non-fractional membership). I also accept that this might have been a motivating factor in his purchasing decision. But what I'm required to decide in this case is whether Mr S was motivated (in part) to purchase Fractional Club membership because he was told that there was a profit to be made, not whether being told this was his only or sole motivation. And I remain of the view that it was.

The Lender submits that my finding that the existence of the disclaimers recognises there was a real risk of buyers forming the impression, from the way the Supplier was marketing and selling Fractional Club membership, that it was an investment is flawed. But I disagree. If there was, in the view of the Supplier, no such risk I question the need for such disclaimers despite the Lender saying they are *"standard compliance measures"*.

In my provisional decision I said:

"A prospective member ***who was told what Mr S says the Supplier told him*** *could easily read the disclaimers in the paperwork without being dissuaded…"* [my emphasis]

So despite what the Lender says to the contrary I don't believe the above *"relies on hypothetical reasoning"*.

Finally I would like to make clear that I didn't find that the absence of documentation showing how the product was explained to Mr S proves misconduct on the Supplier's part. But I would reiterate that taking everything that has been said and submitted by all the parties I'm satisfied, on the balance of probabilities, that the Supplier marketed and sold Fractional Club membership as an investment to Mr S at the Time of Sale in breach of Regulation 14(3) of the Timeshare Regulations and that the prospect of a profit was a motivating factor in his purchasing decision even, if it wasn't the sole or main motivating one.

Putting things right

Having found that Mr S wouldn't have agreed to purchase Fractional Club membership at the Time of Sale were it not for the breach of Regulation 14(3) of the Timeshare Regulations by the Supplier (as deemed agent for the Lender), and the impact of that breach meaning that, in my view, the relationship between the Lender and Mr S was unfair under section 140A of the CCA, I think it would be fair and reasonable to put him back in the position he would have been in had he not purchased the Fractional Club membership (i.e., not entered into the Purchase Agreement), and therefore not entered into the Credit Agreement, provided Mr and Mrs S agree to assign to the Lender their Fractional Points or hold them on trust for the Lender if that can be achieved.

Mr S was an existing non-factional member and this membership was cancelled when he purchased Fractional Club membership. Under his non-fractional membership, he had a number of Points. And, like Fractional Club membership, he had to pay annual management charges as a non-fractional member. So, had Mr S not purchased Fractional Club membership, he would have always been responsible to pay an annual management charge of some sort. With that being the case, any refund of the annual management charges paid by Mr S from the Time of Sale as part of his Fractional Club membership should amount only to the difference between those charges and the annual management charges he would have paid as an ongoing non-fractional member.

So, here's what I think needs to be done to compensate Mr S with that being the case – whether or not a court would award such compensation:

(1) The Lender should refund Mr S' repayments to it under the Credit Agreement including any sums paid to settle the debt, and cancel any ouutstanding balance if there is one.

(2) In addition to (1), the Lender should also refund the difference between Mr S' Fractional Club membership annual management charges paid after the Time of Sale and what his non-factional membership annual management charges would have been had he not purchased Fractional Club membership.

(3) The Lender can deduct:

   i. The value of any promotional giveaways that Mr S used or took advantage of; and

   ii. The market value of the holidays* Mr S took using his Fractional Club membership points if the points value of the holiday(s) taken amounted to more than the total number of non-fractional points he would have been entitled to use at the time of the holiday(s) as an ongoing non-fractional member. However, this deduction should be proportionate and relate only to the additional Fractional Club membership points that were required to take the holiday(s) in question.

For example, if Mr S took a holiday worth 2,550 Fractional Club membership points and he would have been entitled to use a total of 2,500 non-fractional points at the relevant time, any deduction for the market value of that holiday should relate only to the 50 additional Fractional Cub membershop points that were required to take it. But if he would have been entitled to use 2,600 non-fractional points, for instance, there shouldn't be a deduction for the market value of the relevant holiday.

(I'll refer to the output of steps 1 to 3 as the 'Net Repayments' hereafter)

(4) Simple interest** at 8% per annum should be added to each of the Net Repayments from the date each one was made until the date the Lender settles this complaint.

(5) The Lender should remove any adverse information recorded on Mr S' credit file in connection with the Credit Agreement reported within six years of this decision.

(6) If Mr and Mrs S' Fractional Club membership is still in place at the time of this decision, as long as they agree to hold the benefit of his interest in the Allocated Properties for the Lender (or assign it to the Lender if that can be achieved), the Lender must indemnify Mr S against all ongoing liabilities as a result of his Fractional Club membership.

**I recognise that it can be difficult to reasonably and reliably determine the market value of holidays when they were taken a long time ago and might not have been available on the open market. So, if it isn't practical or possible to determine the market value of the holidays Mr S took using his Fractional Club membership points, deducting the relevant annual management charges (that correspond to the year(s) in which one or more holidays were taken) payable under the Purchase Agreement seems to me to be a practical and proportionate alternative in order to reasonably reflect his usage.*

***HM Revenue & Customs may require the Lender to take off tax from this interest. If that's the case, the Lender must give Mr S a certificate showing how much tax it's taken off if he asks for one.*

My final decision

For the reasons I've explained, my final decision is that I uphold this complaint and to settle it Mitsubishi HC Capital UK PLC trading as Novuna Personal Finance must take the steps I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 13 May 2026.

Peter Cook
Ombudsman