

The complaint

Mr C'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 C, and another party, were members of a timeshare provider (the 'Supplier') – having purchased a membership known as the 'Balkan Jewel' membership on 26 August 2014. They purchased 11,000 fractional points however this purchase falls outside the scope of this complaint as it was funded by other means.¹

The product at the centre of this complaint is their further purchase of the Balkan Jewel membership – which they bought on 17 June 2015 (the 'Time of Sale'). They entered into an agreement with the Supplier to buy 4,000 fractional points at a cost of £4,200 (the 'Purchase Agreement').

Mr C paid for their Balkan Jewel membership by taking finance of £4,200 from the Lender (the 'Credit Agreement') in his sole name. Whilst the Purchase Agreement was in joint names, Mr C is the only eligible claimant (and complainant) under the Credit Agreement. For that reason, I shall refer to Mr C only throughout this decision.

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

Mr C – using a professional representative (the 'PR') – wrote to the Lender on 24 August 2020 (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.

Mr C referred his complaint to the Financial Ombudsman Service. On 21 May 2024, the Lender dealt with Mr C's concerns as a complaint and issued its final response rejecting it on all grounds.

Mr C'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 Balkan Jewel membership as an investment to Mr C 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 C was

¹ Please note, a complaint about this purchase has been considered by an Ombudsman and following receipt of a provisional decision, the Lender who provided finance for this agreement agreed to provide redress to Mr C.

rendered unfair to him for the purposes of Section 140A of the CCA.

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') dated 3 March 2026. In that decision, I said:

“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 no different to that shared in several hundred ombudsman decisions on very similar complaints. And with that being the case, it is not necessary to set it out here. But if either side would like me to confirm what I think that context is, they can let me know in response to this provisional decision.

My provisional findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. And having done that, I currently think that this complaint should be upheld because the Supplier breached Regulation 14(3) of the Timeshare Regulations by marketing and/or selling Balkan Jewel membership to Mr C 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 is not to address every single point that has been made to date. Instead, it is to decide what is fair and reasonable in the circumstances of this complaint. So, while I recognise that there are a number of aspects to this complaint, it is not necessary to make formal findings on all of them because, even if one or more of those aspects ought to succeed, the redress I am currently proposing puts Mr C in the same or a better position than he would otherwise be in.

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

Having considered the entirety of the credit relationship between Mr C 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 have looked at:

- 1. The Supplier's sales and marketing practices at the Time of Sale – which includes training material that I think is likely to be relevant to the 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 have then considered the impact of these on the fairness of the credit relationship between Mr C and the Lender.

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

The Lender does not dispute, and I am satisfied, that Mr C's Balkan Jewel 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 Balkan Jewel 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 C says that the Supplier did exactly that at the Time of Sale – saying, in summary, that he was told by the Supplier that if he purchased more Balkan Jewel points, he would be increasing his investment and it would greatly improve his return.

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

Mr C's share in the Allocated Property clearly 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 it is important to note at this stage that the fact that Balkan Jewel membership included an investment element did not, itself, transgress the prohibition in Regulation 14(3). That provision prohibits the marketing and selling of a timeshare contract as an investment. It doesn't prohibit the mere existence of an investment element in a timeshare contract or prohibit the marketing and selling of such a timeshare contract per se.

In other words, the Timeshare Regulations did not ban products such as the Balkan Jewel. They just regulated how such products were marketed and sold.

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

There is evidence in this complaint that the Supplier made efforts to avoid specifically describing membership of the Balkan Jewel as an 'investment' or quantifying to prospective purchasers, such as Mr C, the financial value of his share in the net sales proceeds of the Allocated Property along with the investment considerations, risks and rewards attached to them. There were, for instance, disclaimers in the contemporaneous paperwork that state that Balkan Jewel membership was not sold to Mr C as an investment.

However, weighing up what happened in practice is, in my view, rarely as simple as looking at the contemporaneous paperwork. And for reasons I'll now come on to, given

the facts and circumstances of this complaint, I think the Supplier is likely to have breached Regulation 14(3) of the Timeshare Regulations.

How the Supplier marketed and sold the Balkan Jewel membership

The Supplier sold two similar types of memberships at the same time. One was the Balkan Jewel membership, which is the membership Mr C purchased. They also sold another version, simply called the Fractional Owners' Club.

I've seen a variety of internal materials produced by the Supplier dating from around the time it started selling these products. Including witness statements from various staff members who worked for the Supplier commenting on the materials that the Lender shared with us in response to the Investigator's view. These materials appear to relate to the Fractional Owners Club and it's not clear if they were ever intended to be directly relevant to the sale of Balkan Jewel Membership particularly since it isn't specifically mentioned within the materials. But nonetheless, it seems inherently unlikely that the sale of Balkan Jewel membership would have taken place in a materially different way to the sale of the Fractional Owners' Club, particularly since there was, at certain points, overlap with the two products being sold at the same time, and the similarities in the way the products worked. For example, they were both asset-backed with the net proceeds of the sale of the allocated properties split between the fractional owners at the end of the membership term.

In general, I do think some of these materials indicate that the Supplier was focused on avoiding breaching Regulation 14(3). But other materials, like the presentation slides, implied that the Supplier's brand and other attributes would contribute to enhancing the value of the fractional asset at the end of the membership term.

The Lender has highlighted two court judgments – Gallagher v Diamond Resorts and Brown & Brown vs Shawbrook Bank Limited whereby it was concluded that the contractual and signed documents were very carefully drafted to make it clear that Fractional Club membership was not an investment in property but an investment in holidays. I also recognise the amount of evidence that's been provided by the Lender in support of the disclaimer in the contemporaneous paperwork and acknowledge what these say about the Supplier not referring to Mr C's membership as an investment. I've carefully considered all of this when thinking about the inherent probability of Mr C's allegation but ultimately it's difficult to explain why it was necessary to include such disclaimers if there wasn't a very real risk of the Supplier marketing and/or selling membership as an investment.

Although I can't be certain of what was shown to Mr C during his sales process, or what specifically any sales representative may have said to him, any more than the Supplier or Lender can. But I think from what I've seen, there was the potential for the Balkan Jewel product to be sold in a way which meant the Supplier is likely to have breached Regulation 14(3) of the Timeshare Regulations. And I don't think the Supplier would have needed to deviate very far from a simple description of how the product worked in terms of the sale of the fractional asset at the end of the term to have fallen foul of Regulation 14(3).

When the Government consulted on the implementation of the Timeshare Regulations, it discussed what marketing or selling a timeshare as an investment might look like - saying that '[a] trader must not market or sell a timeshare or [long-term] holiday product as an investment. For example, there should not be any inference that the cost of the contract

would be recoupable at a profit in the future (see regulation 14(3)).² And in my view that must have been correct because it would defeat the consumer-protection purpose of Regulation 14(3) if the concepts of marketing and selling a timeshare as an investment were interpreted too restrictively.

So, if a supplier implied to consumers that future financial returns (in the sense of possible profits) from a timeshare were a good reason to purchase it, I think its conduct was likely to have fallen foul of the prohibition against marketing or selling the product as an investment.

For, if I'm wrong about that, I find it difficult to explain why, in paragraphs 77 and 78 followed by 100 of *Shawbrook & BPF v FOS*, Mrs Justice Collins Rice said the following:

"[...] I endorse the observation made by Mr Jaffey KC, Counsel for BPF, that, whatever the position in principle, it is apparently a major challenge in practice for timeshare companies to market fractional ownership timeshares consistently with Reg.14(3). [...] Getting the governance principles and paperwork right may not be quite enough.

The problem comes back to the difficulty in articulating the intrinsic benefit of fractional ownership over any other timeshare from an individual consumer perspective. [...] If it is not a prospect of getting more back from the ultimate proceeds of sale than the fractional ownership cost in the first place, what exactly is the benefit? [...] What the interim use or value to a consumer is of a prospective share in the proceeds of a postponed sale of a property owned by a timeshare company – one they have no right to stay in meanwhile – is persistently elusive."

"[...] although the point is more latent in the first decision than in the second, it is clear that both ombudsmen viewed fractional ownership timeshares – simply by virtue of the interest they confer in the sale proceeds of real property unattached to any right to stay in it, and the prospect they undoubtedly hold out of at least 'something back' – as products which are inherently dangerous for consumers. It is a concern that, however scrupulously a fractional ownership timeshare is marketed otherwise, its offer of a 'bonus' property right and a 'return' of (if not on) cash at the end of a moderate term of years may well taste and feel like an investment to consumers who are putting money, loyalty, hope and desire into their purchase anyway. Any timeshare contract is a promise, or at the very least a prospect, of long-term delight. [...] A timeshare-plus contract suggests a prospect of happiness-plus. And a timeshare plus 'property rights' and 'money back' suggests adding the gold of solidity and lasting value to the silver of transient holiday joy." (emphasis my own)

Given what I've already said about the Supplier's training material and the way in which I think it was likely to have framed the sale of Balkan Jewel membership to prospective members (including Mr C), I think it is more likely than not that the Supplier did, at the very least, imply that future financial returns (in the sense of possible profits) from a Balkan Jewel was a good reason to purchase it – which, broadly speaking, is consistent with Mr C recollections of the sale.

In this case, Mr C was already a Balkan Jewel member and rather than increasing his existing membership, he made another separate purchase meaning he had the right to

² The Department for Business Innovation & Skills "Consultation on Implementation of EU Directive 2008/122/EC on Timeshare, Long-Term Holiday Products, Resale and Exchange Contracts (July 2010)". <https://assets.publishing.service.gov.uk/media/5a78d54ded915d0422065b2a/10-500-consultation-directive-timeshare-holiday.pdf>

the net sale proceeds from the sale of two Allocated Properties rather than one. So it seems likely to me, given this set of particular circumstances, that the Supplier would have focused on that benefit when making his further purchase as this is what comes across in what Mr C says about the sale of his Balkan Jewel membership when he says “we were told that if we purchased further points that we would be increasing our investment and that it would greatly improve our return on investment.”

So, overall, on the balance of probabilities, I think the Supplier’s sales representative was likely to have led Mr C to believe that Balkan Jewel was an investment that may lead to a financial gain (i.e., a profit) in the future. And with that being the case, I do not find him either implausible or hard to believe when he says that he was were told that he was were buying shares in property that, being an investment, will lead to a financial gain. On the contrary, given everything I have seen so far, I think that is likely to be what Mr C was led to believe by the Supplier at the relevant time. And for that reason, I think the Supplier breached Regulation 14(3) of the Timeshare Regulations.

Was the credit relationship between the Lender and the Consumer rendered unfair?

Having found that the Supplier breached Regulation 14(3) of the Timeshare Regulations at the Time of Sale, I now need to consider what impact that breach had on the fairness of the credit relationship between Mr C and the Lender under the Credit Agreement and related Purchase Agreement as the case law on Section 140A makes it clear that regulatory breaches do not automatically create unfairness for the purposes of that provision. Such breaches and their consequences (if there are any) must be considered in the round, rather than in a narrow or technical way.

Indeed, it seems to that, if I am to conclude that a breach of Regulation 14(3) led to a credit relationship between Mr C and the Lender that was unfair to him and warranted relief as a result, whether the Supplier’s breach of Regulation 14(3) led him to enter into the Purchase Agreement and the Credit Agreement is an important consideration. To help me decide this point, I’ve carefully considered what Mr C has said in the course of his complaint about how the membership was sold to him and his motivation for taking it out.

On my reading of Mr C’s testimony, the prospect of a financial gain from Balkan Jewel membership was an important and motivating factor when he decided to go ahead with his purchase. I do however accept that Mr C was interested in holidays but that isn’t surprising given the nature of the product at the centre of this complaint so I’m not surprised to see Mr C making use of the holiday benefits given to him as part of his membership.

As I set out at the start of my decision, Mr C was already a Balkan Jewel member having purchased 11,000 fractional points just under a year earlier to the purchase I’m considering. Mr C then entered into a separate agreement to purchase 4,000 more Balkan Jewel fractional points.

I think it’s important to set out what Mr C says he was told when he first purchased his membership. Although I am not considering a complaint about this purchase, I think it is fair for me to consider what Mr C says he was told as that is likely to set the tone for his subsequent purchase that is the subject of this complaint – especially as this was the same type of product so I think it’s likely it would have been sold in a very similar way.

We’ve been provided with Mr C’s written testimony dated 24 October 2019 and in this, Mr C says the following about his first purchase in 2014:

“At the sales presentations, we were told that if we made a purchase with [Supplier], that we would be investing and would have access to luxurious, exclusive holidays with great availability, not to mention an increase in value which also meant a sound return on our investment.

[...]

We were told that the contract would only last 15 years and that after that time period we would make a profit from the sale. We were told repeatedly that this would be an investment.”

This would suggest that Mr C purchased his agreement on the belief that he would receive a profit at the end of his membership term. I don't find it unreasonable to assume that Mr C would have maintained his belief that he would be making a profit as a result of purchasing additional points. After all, he did say:

“...we were told that if we purchased further points that we would be increasing our investment and that it would greatly improve our return on investment.

[...]

...we decided to make the purchase to benefit from the increase in value of the investment.”

As I've mentioned earlier as a result of this purchase, Mr C was entitled to receive the net sale proceeds from two Allocated Properties rather than one.

In response to the Investigator's view, the Lender raises some concerns with Mr C's testimony. Firstly, it says Mr C makes no reference to the Allocated Properties, but I don't think this is fundamental. Although not the subject of this complaint, when Mr C initially purchased his first Balkan Jewel membership, he said he was told the contract would last for 15 years after which he would make a profit from the sale. Thinking about how the product worked, Mr C could have only been referring to the sale of the Allocated Property when he shared his recollections about the “profit from the sale”. Mr C goes on to say if he purchased further points, he would be increasing his investment. I think, on balance, it's likely Mr C is referring to the eventual sale of the Allocated Property and the possibility of a profit as a result of the sale when he is referring to ‘investment’ throughout his testimony.

I acknowledge their comments around what Mr C said surrounding one of his later purchases in February 2016 but if I were to focus on what Mr C said about what he was told when he purchased more Balkan Jewel points, I don't think what he has said later on undermines his recollections about the sale in question. So, whilst being conscious of the fact that memories can fade over time, I am satisfied that this was an honest account of his recollections of how the Balkan Jewel membership was sold to him by the Supplier at the Time of Sale. Mr C's purchase in February 2016 could suggest that he wanted or needed more holiday points but this doesn't detract from what he was told about the investment element at the Time of Sale by the Supplier nor that the investment element was material in his purchasing decision.

The Lender also says that the Supplier's system notes do not reflect that Mr C purchased his membership as an investment. There may be no mention of the membership being bought by Mr C as an investment in the sales note but I don't think that means it wasn't sold or bought for that reason. Given that the sales representative would likely have been aware that they should not market and/or sell the membership as an investment, I am not at all surprised there's no reference to this within the note the sales representative left. For the same reason, I don't think it's critical to my findings on this case that there's a note left for Mr C's later purchase which mentions that he was buying more holidays as he wanted to take family with him.

Taking everything into consideration, I think Mr C says (plausibly in my view) that Balkan Jewel membership was marketed and sold to him at the Time of Sale as something that offered him more than just holiday rights, on the balance of probabilities, I think his purchase was motivated by his share in the Allocated Property and the possibility of a profit as that share was one of the defining features of membership that marked it apart from the more 'standard' type of timeshare available to them. And with that being the case, I think the Supplier's breach of Regulation 14(3) was material to the decision he ultimately made.

Mr C has not said or suggested, for example, that he would have pressed ahead with the purchase in question had the Supplier not led him to believe that Balkan Jewel membership was an appealing investment opportunity. And as he faced the prospect of borrowing and repaying a substantial sum of money while subjecting himself to long-term financial commitments, had he not been encouraged by the prospect of a financial gain from membership of the Balkan Jewel, I'm not persuaded that he would have pressed ahead with his purchase regardless.

Conclusion

Given the facts and circumstances of this complaint, I think the Lender participated in and perpetuated an unfair credit relationship with Mr C under the Credit Agreement and related Purchase Agreement for the purposes of Section 140A. And with that being the case, taking everything into account, I think it is fair and reasonable that I uphold this complaint.

Fair Compensation

Having found that Mr C would not have agreed to purchase Balkan Jewel 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 the Consumer 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 Balkan Jewel membership (i.e., not entered into the Purchase Agreement), and therefore not entered into the Credit Agreement, provided Mr C agrees to assign to the Lender his 4,000 fractional points or hold them on trust for the Lender if that can be achieved.

Mr C was an existing Balkan Jewel member ('Membership 1'), but his membership wasn't traded in against the purchase price of Balkan Jewel membership in question ('Membership 2') at the Time of Sale. Therefore, the Lender should only be responsible for the management charges associated with Mr C's 4,000 fractional points. I believe the Supplier charged Mr C annually for his management charges under Membership 1 and Membership 2. With that being the case, any refund of the annual management charges paid by Mr C from the Time of Sale as part of Membership 2 should amount only to the difference between those charges and the annual management charges he would have paid as part of Membership 1.

On 30 September 2015 ('Time of Upgrade'), Mr C purchased another Balkan Jewel member ('Membership 3'). From my understanding, from this point onwards, the management charges Mr C would have paid, incorporated all 3 of his purchases. Therefore, from 30 September 2015, the Lender needs to refund a proportion of the management charges payable after the Time of Upgrade (specially relating to 4,000 fractional points of his 24,000 points) – which, on this occasion, equates to 17% of the

annual management charges paid after the Time of Upgrade under FC Membership 3.

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

- (1) The Lender should refund Mr C's repayments to it under the Credit Agreement, including any sums paid to settle the debt, and cancel any outstanding balance if there is one.*
- (2) In addition to (1), the Lender should also refund the difference between Membership 2 annual management charges Mr C paid, between the Time of Sale and the Time of Upgrade, and what his Membership 1 annual management charges would have been at that time had they not purchased FC Membership 2. The Lender should also refund the difference between 17% of the annual management charges he paid after the Time of Upgrade and the annual management charges he would have paid under Membership 1 had he not purchased FC Membership 2.*
- (3) The Lender can deduct:*

The value of any promotional giveaways that Mr C used or took advantage of;

i. Before the Time of Upgrade, the market value of the holidays Mr C took using Membership 2 if the Points value of the holiday(s) taken amounted to more than the total number of fractional points he would have been entitled to use at the time of the holiday(s) as an ongoing Membership 1 member. However, this deduction should be proportionate and relate only to the additional fractional points that were required to take the holiday(s) in question.*

For example, if Mr C took a holiday worth 2,550 fractional points after the Time of Sale and he would have been entitled to use a total of 2,500 fractional points under FC Membership 1 at the relevant time, any deduction for the market value of that holiday should relate only to the 50 additional fractional points that were required to take it. But if he would have been entitled to use 2,600 fractional points under FC Membership 1, for instance, there shouldn't be a deduction for the market value of the relevant holiday.

And

ii. After the Time of Trade-in, the market value of the holidays Mr C took using Membership 3 if the Points value of the holiday(s) taken amounted to more than the total number of fractional points he would have been entitled to use at the time of the holiday(s) as an ongoing FC Membership 1 member. However, this deduction should relate only 16% of the additional fractional points that were required to take the holiday(s) in question.*

For example, if Mr C took a holiday worth 2,550 fractional points after the Time of Trade-In and he would have been entitled to use a total of 2,500 fractional points under Membership 1 at the relevant time, any deduction for the market value of that holiday should relate only to 16% of the 50 additional fractional points that were required to take it. But if he would have been entitled to use 2,600 fractional points under Membership 1, 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 C's credit file in connection with the Credit Agreement reported within six years of this decision.*
- (6) *If Mr C's Balkan Jewel membership is still in place at the time of this decision, as long as he agrees to hold the benefit of his interest in the Allocated Property for the Lender (or assign it to the Lender if that can be achieved), the Lender must indemnify him against all ongoing liabilities as a result of his purchase of 4,000 Balkan Jewel fractional points.*

**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 C took using his fractional 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 the consumer a certificate showing how much tax it's taken off if they ask for one."*

The PR responded to the PD and accepted it.

The Lender also responded but did not accept the PD and provided some further comments and evidence they wish to be considered.

In summary, they stated:

- It had concerns with Mr C's statement and questioned its credibility. They believe the statement has been drafted by the PR and raised issues with the timing of the statement due to it being received by our service after the judgment was handed down in *Shawbrook and BPF v FOS*³.
- It believes my reliance on his statement in relation to his earlier purchase is not reliable as his description is vague.
- In his statement, Mr C says his earlier purchase in 2014 "turned out to be a lie" so the Lender questions why he would then agree to a further purchase if he was already questioning the legitimacy of an earlier purchase.
- It disagrees that any investment motivations played a material role in Mr C's decision to purchase.

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

The legal and regulatory context

In considering what is fair and reasonable in all the circumstances of the complaint, I am required under DISP 3.6.4R to take into account: relevant (i) law and regulations; (ii)

³ *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').

regulators' rules, guidance and standards; and (iii) codes of practice; and (where appropriate), what I consider to have been good industry practice at the relevant time.

The legal and regulatory context that I think is relevant to this complaint is, in many ways, no different to that shared in several hundred published ombudsman decisions on very similar complaints – which can be found on the Financial Ombudsman Service's website. And with that being the case, it is not necessary to set out that context in detail here. But I would add that the following regulatory rules/guidance are also relevant:

The Consumer Credit Sourcebook ('CONC') – Found in the Financial Conduct Authority's (the 'FCA') Handbook of Rules and Guidance

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

- CONC 3.7.3 [R]
- CONC 4.5.3 [R]
- CONC 4.5.2 [G]

The FCA's Principles

The rules on consumer credit sit alongside the wider obligations of firms, such as the Principles for Businesses ('PRIN'). Set out below are those that are most relevant to this complaint:

- Principle 6
- Principle 7
- Principle 8

What I've decided – and why

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

Following the responses from both parties, I've considered the case afresh and having done so, I've reached the same decision as that which I outlined in my provisional findings, for broadly the same reasons.

Again, my role as an Ombudsman isn't to address every single point which has been made to date, but to decide what is fair and reasonable in the circumstances of this complaint. If I haven't commented on, or referred to, something that either party has said, this doesn't mean I haven't considered it.

Rather, I've focused here on addressing what I consider to be the key issues in deciding this complaint and explaining the reasons for reaching my final decision.

In terms of the timing of the statement, I have seen evidence in the form of a screenshot, that the PR spoke to Mr C on 24 October 2019 and obtained his statement. So, on balance, I think the statement was written on the date recorded on the statement.

As this statement was taken during a telephone call, I am mindful of the risk that Mr C may have been guided through the process, and the associated risk that what has been written may not be his own specific recollections. But I think that risk is low, as I can see it contains detailed personal information about his purchasing history and what happened at the Time of Sale that only Mr C would have known, so I have no doubt that Mr C had a significant input

into its contents. It is also not unusual for statements to be prepared on complainants' behalf by professional representatives. Taking everything into account I am satisfied that it is a record of Mr C's recollections of the Time of Sale.

Furthermore, I do not think Mr C's testimony is worded in a way that suggests it was coloured by the judgment in *Shawbrook & BPF v FOS*. I think it is more than likely that this was an honest account of his recollections of how his membership was sold to him by the Supplier. And although I accept there's some inconsistencies in his testimony, I don't think this undermines the core of acceptable evidence it contains.

I don't agree that Mr C's testimony around the investment element of his membership is vague and brief. As I considered in my PD, Mr C set out what he was told about the prospect of a financial gain each time he purchased memberships from the Supplier, and having considered what he said, I'm persuaded the investment element was an important and motivating factor when he decided to go ahead with the purchase in question.

Mr C describes several concerns when recalling his experiences with the Supplier about his purchases. In relation to his earlier sale, Mr C says:

"At the sales presentations, we were told that if we made a purchase with [Supplier], that we would be investing and would have access to luxurious, exclusive holidays with great availability, not to mention an increase in value which also meant a sound return on our investment. This turned out to be a lie as we found none of this to be true and it was difficult to book."

So the Lender doesn't understand why Mr C would purchase again if he had concerns around the investment element of his membership.

In relation to the purchase in question, Mr C says:

"At this presentation, we were told that if we purchased further points that we would be increasing our investment and that it would greatly improve our return on investment. We were told that they were on offer just now and that they were cheaper than being advertised. We were told that the choice of apartments and the availability would improve"

Considering what Mr C has said, it's not implausible to think that Mr C thought this purchase would improve the return he was expecting to see. And with more points, his holiday options would improve so I don't think anything Mr C has said changes my mind that the Supplier's breach of Regulation 14(3) was material to his purchasing decision.

In my provisional decision, I noted that Mr C purchased more holiday points in 2016. Although Mr C claimed that these points were sold as an investment – this purchase did not involve an asset from which Mr C could expect a financial return from. However, as I said in my PD, I don't think what Mr C says in relation this purchase undermines his recollections about the sale in question. When thinking about his recollections as a whole, I'm satisfied that the Balkan Jewel membership was sold to him by the Supplier at the Time of Sale as an investment and this was material to his purchasing decision.

Putting things right

Having found that Mr C would not have agreed to purchase Balkan Jewel 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 the Consumer 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 Balkan Jewel membership (i.e., not entered into the Purchase Agreement), and therefore not entered into the Credit Agreement, provided Mr C agrees to assign to the Lender his 4,000 fractional points or hold them on trust for the Lender if that can be achieved.

Mr C was an existing Balkan Jewel member ('Membership 1'), but his membership wasn't traded in against the purchase price of Balkan Jewel membership in question ('Membership 2') at the Time of Sale. Therefore, the Lender should only be responsible for the management charges associated with Mr C's 4,000 fractional points. I believe the Supplier charged Mr C annually for his management charges under Membership 1 and Membership 2. With that being the case, any refund of the annual management charges paid by Mr C from the Time of Sale as part of Membership 2 should amount only to the difference between those charges and the annual management charges he would have paid as part of Membership 1.

On 30 September 2015 ('Time of Upgrade'), Mr C purchased another Balkan Jewel member ('Membership 3'). From my understanding, from this point onwards, the management charges Mr C would have paid, incorporated all 3 of his purchases. Therefore, from 30 September 2015, the Lender needs to refund a proportion of the management charges payable after the Time of Upgrade (specially relating to 4,000 fractional points of his 24,000 points) – which, on this occasion, equates to 17% of the annual management charges paid after the Time of Upgrade under FC Membership 3.

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

- (1) The Lender should refund Mr C's repayments to it under the Credit Agreement, including any sums paid to settle the debt, and cancel any outstanding balance if there is one.
- (2) In addition to (1), the Lender should also refund the difference between Membership 2 annual management charges Mr C paid, between the Time of Sale and the Time of Upgrade, and what his Membership 1 annual management charges would have been at that time had they not purchased FC Membership 2. The Lender should also refund the difference between 17% of the annual management charges he paid after the Time of Upgrade and the annual management charges he would have paid under Membership 1 had he not purchased FC Membership 2.
- (3) The Lender can deduct:

The value of any promotional giveaways that Mr C used or took advantage of;

- i. Before the Time of Upgrade, the market value of the holidays* Mr C took using Membership 2 if the Points value of the holiday(s) taken amounted to more than the total number of fractional points he would have been entitled to use at the time of the holiday(s) as an ongoing Membership 1 member. However, this deduction should be proportionate and relate only to the additional fractional points that were required to take the holiday(s) in question.

For example, if Mr C took a holiday worth 2,550 fractional points after the Time of Sale and he would have been entitled to use a total of 2,500 fractional points under FC Membership 1 at the relevant time, any deduction for the market value of that holiday should relate only to the 50 additional fractional points that were required to take it. But if he would have been entitled to use 2,600 fractional

points under FC Membership 1, for instance, there shouldn't be a deduction for the market value of the relevant holiday.

And

- ii. After the Time of Trade-in, the market value of the holidays* Mr C took using Membership 3 if the Points value of the holiday(s) taken amounted to more than the total number of fractional points he would have been entitled to use at the time of the holiday(s) as an ongoing FC Membership 1 member. However, this deduction should relate only 16% of the additional fractional points that were required to take the holiday(s) in question.

For example, if Mr C took a holiday worth 2,550 fractional points after the Time of Trade-In and he would have been entitled to use a total of 2,500 fractional points under Membership 1 at the relevant time, any deduction for the market value of that holiday should relate only to 16% of the 50 additional fractional points that were required to take it. But if he would have been entitled to use 2,600 fractional points under Membership 1, 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 C's credit file in connection with the Credit Agreement reported within six years of this decision.
- (6) If Mr C's Balkan Jewel membership is still in place at the time of this decision, as long as he agrees to hold the benefit of his interest in the Allocated Property for the Lender (or assign it to the Lender if that can be achieved), the Lender must indemnify him against all ongoing liabilities as a result of his purchase of 4,000 Balkan Jewel fractional points.

*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 C took using his fractional 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 the consumer a certificate showing how much tax it's taken off if they ask for one.

My final decision

For the reasons set out above, I uphold this complaint and direct Mitsubishi HC Capital UK PLC trading as Novuna Consumer Finance to calculate and pay Mr C fair compensation as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 29 May 2026.

Sameena Ali
Ombudsman