

The complaint

Mrs T'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 her under Section 140A of the Consumer Credit Act 1974 (as amended) (the 'CCA') and (2) deciding against paying a claim under Section 75 of the CCA.

What happened

Mrs T purchased membership of a timeshare (the 'Fractional Club') from a timeshare provider (the 'Supplier') on 28 October 2015 (the 'Time of Sale'). She entered into an agreement with the Supplier to buy 1200 fractional points at a cost of £13,421 (the 'Purchase Agreement').

Fractional Club membership was asset backed – which meant it gave Mrs T more than just holiday rights. It also included a share in the net sale proceeds of a property named on her Purchase Agreement (the 'Allocated Property') after her membership term ends.

Mrs T paid for her Fractional Club membership by taking finance of £13,421 from the Lender in Mrs T's name (the 'Credit Agreement').

On 24 August 2017, Mrs T recorded her recollections of the sales process that the Supplier undertook, including her reasons for making the purchase. This document was witnessed and notarised by a UK based solicitor and formed the basis of legal action in Spain and subsequently a complaint to the Supplier.

This document included several references to the role the investment element of the product played in the purchase decision.

Mrs T – using a professional representative (the 'PR') – wrote to the Lender on 2 March 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 Lender dealt with Mrs T's concerns as a complaint and issued its final response letter on 29 March 2022, rejecting it on every ground.

Mrs T then referred the complaint to the Financial Ombudsman Service. It 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 Mrs T 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 her purchasing decision, the Investigator concluded that the credit relationship between the Lender and Mrs T was rendered unfair to her 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 reviewed and considered all the arguments and submissions made by PR and the Lender, including those made in response to our investigator's view.

Having done so, I issued a provisional decision (the 'PD') dated 30 September 2025. I agreed with our Investigator, and decided that the complaint should be upheld. In that decision, I said:

“ 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 Fractional Club membership to Mrs T as an investment, which, in the circumstances of this complaint, rendered the credit relationship between her and the Lender unfair to her for the purposes of Section 140A of the CCA.

Although I agree with our Investigator's view and proposed redress, I have provided additional reasoning into how I have reached this decision. Consequently, I think it's fair to give both Mrs T and the Lender the opportunity to comment before I issue my final decision.

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 Mrs T in the same or a better position than she 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 Mrs T 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 Mrs T 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 Mrs T 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 Club membership as an investment. This is what the provision said at the Time of Sale:

“A trader must not market or sell a proposed timeshare contract or long-term holiday product contract as an investment if the proposed contract would be a regulated contract.”

But Mrs T says that the Supplier did exactly that at the Time of Sale – saying, in summary, that she was told by the Supplier that Fractional Club membership was the type of investment that would only increase in value.

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.

Mrs T share in the Allocated Property clearly constituted an investment as it offered her the prospect of a financial return – whether or not, like all investments, that was more than what she first put into it. But it is important to note at this stage that 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 did not ban products such as the Fractional Club. They just regulated how such products were marketed and sold.

To conclude, therefore, that Fractional Club membership was marketed or sold to Mrs T 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 her as an investment, i.e. told her or led her to believe that Fractional Club membership offered her 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 Fractional Club as an ‘investment’ or quantifying to prospective purchasers, such as Mrs T, the financial value of her 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 Fractional Club membership was not sold to Mrs T 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 Fractional Club membership

During the course of the Financial Ombudsman Service's work on complaints about the sale of timeshares, the Supplier has provided training material used to prepare its sales representatives – including:

- 1. a document called the 2013/2014 Sales Induction Training (the '2013/2014 Induction Training');*
- 2. screenshots of a Electronic Sales Aid (the 'ESA'); and*
- 3. a document called the "FPOC2 Fly Buy Induction Training Manual" (the 'Fractional Club Training Manual')*

Neither the 2013/2014 Induction Training nor the ESA I've seen included notes of any kind. However, the Fractional Club Training Manual includes very similar slides to those used in the ESA. And according to the Supplier, the Fractional Club Training Manual (or something similar) was used by it to train its sales representatives at the Time of Sale. So, it seems to me that the Training Manual is reasonably indicative of:

- (1) the training the Supplier's sales representatives would have got before selling Fractional Club membership; and*
- (2) how the sales representatives would have framed the Supplier's multimedia presentation (i.e., the ESA) during the sale of Fractional Club membership to prospective members – including Mrs T.*

The "Game Plan" on page 23 of the Fractional Club Training Manual indicates that, of the first 12 to 25 minutes, most of that time would have been spent taking prospective members through a comparison between "renting" and "owning" along with how membership of the Fractional Club worked and what it was intended to achieve.

Page 32 of the Fractional Club Training Manual covered how the Supplier's sales representatives should address that comparison in more detail – indicating that they would have tried to demonstrate that there were financial advantages to owning property, over 10 years for example, rather than renting:

• Re-visit the idea of renting a house and talk them through the example of renting a home for £500 highlighting the fact of no return

• Refer to their decision to purchase a property as it made more financial sense to own than rent because, not only are they are building equity in their property, they can also continue to enjoy living in their home once it is paid for

• Ask: "if it cost a little more to own rather than rent would they be happy to pay the extra to own?" (increase amount of owning and continue to do this for a couple of times until they don't agree.

✎ **CLOSE:** So what you are telling me is that, as long as it's comfortably affordable, you would always choose to own rather than rent, is that correct?

✎ **LINK:** Now let me show you the relevance this has when it comes to your holidays because what you are currently doing is ...

CLOSE:

Indeed, one of the advantages of ownership referred to in the slide above is that it makes more financial sense than renting because owners "are building equity in their property". And as an owner's equity in their property is built over time as the value of the asset increases relative to the size of the mortgage secured against it, one of the advantages of ownership over renting was portrayed in terms that played on the opportunity ownership gave prospective members of the Fractional Club to accumulate wealth over time.

I acknowledge that the slides don't include express reference to the "investment" benefit of ownership. But the description alludes to much the same concept. It was simply rephrased in the language of "building equity". And with that being the case, it seems to me that the approach to marketing FCM was to strongly imply that 'owning' fractional points was a way of building wealth over time, similar to home ownership.

Page 33 of the Fractional Club Training Manual then moved the Supplier's sales representatives onto a cost comparison between "renting" holidays and "owning" them. Sales representatives were told to ask prospective members to tell them what they'd own if they just paid for holidays every year in contrast to spending the same amount of money to "own" their holidays – thus laying the groundwork necessary to demonstrating the advantages of Fractional Club membership:

- You are currently spending £xxxx on your holidays each year... (taken from survey)
- Confirm exactly what clients get for that money in terms of quality, people travelling and weeks
- Confirm the client will holiday for the next 10 years
- Explain total cost, with no inflation over a ten year period and ask what they own at the end of that period
- Compare spending the same money to own your holidays with better benefits, so that at the end of the ten years they would have received better value

CLOSE: So, looking at the two options which way makes more sense, to own or rent your holidays? (Get the answer "Owning") This is why so many people choose to holiday with ~~£3000~~.

LINK: Before I show you how the product works, I am just going to tell you how ~~£3000~~ started and where we are today.

CLOSE:

With the groundwork laid, sales representatives were then taken to the part of the ESA that explained how FCM worked. And, on pages 41 and 42 of the Fractional Club Training Manual, this is what sales representatives were told to say to prospective members when explaining what a 'fraction' was:

"FPOC = small piece of [...] World apartment which equals **ownership of bricks and mortar** [...]"

Major benefit is the property is sold in nineteen years (**optimum period to cover peaks and troughs in the market**) when sold you will get your share of the proceeds of the sale

SUMMARISE LAST SLIDE:

FPOC equals a passport to fantastic holidays for 19 years with a return at the end of that period. When was the last time you went on holiday and got some money back? How would you feel if there was an opportunity of doing that?

[...]

*LINK: Many people join us every day and one of the main questions they have is “**how can we be sure our interests are taken care of for the full 19 years?**” As it is very important you understand how we ensure that, I am going to ask Paul to come over and explain this in more details for you.*

[...]

*“Handover: (Manager’s name) John and Mary love FPOC and have told me the best for them is.....**Would you mind explaining to them how their interest will be protected over the next 19 year[s]?**”*

(My emphasis added)

The Fractional Club Training Manual doesn’t give any immediate context to what the manager would have said to prospective members in answer to the question posed by the sales representative at the handover. Page 43 of the manual has the word “script” on it but otherwise it’s blank. However, after the Manual covered areas like the types of holiday and accommodation on offer to members, it went onto “resort management”, at which point page 61 said this:

“T/O will explain slides emphasising that they only pay a fraction of maintaining the entire property. It also ensures property is kept in peak condition to maximise the return in 19 years[’] time.

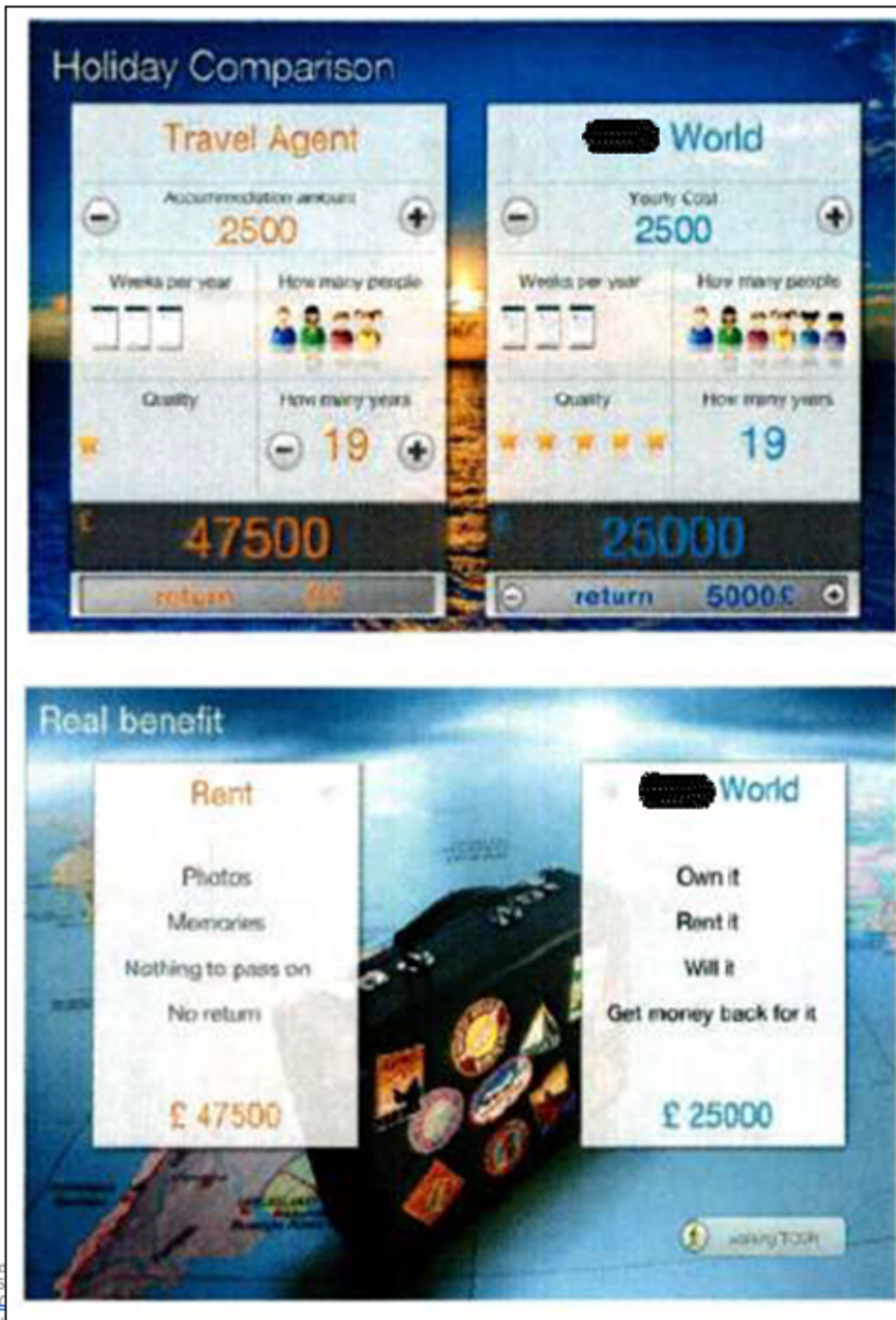
[...]

CLOSE: I am sure you will agree with us that this management fee is an extremely important part of the equation as it ensures the property is maintained in pristine condition so at the end of the 19 year period, when the property is sold, you can get the maximum return. So I take it, like our owners, there is nothing about the management fee that would stop you taking you holidays with us in the future?...”

(My emphasis added)

By page 68 of the Fractional Training Manual, sales representatives were moved on to the holiday budget of prospective members. Included in the ESA were a number of holiday comparisons. It isn’t entirely clear to me what the relevant parts of the ESA were designed to show prospective members. But it seems that prospective members would have been shown that there was the prospect of a “return”.

For example, on page 69 of the Fractional Club Induction Training Manual, it included the following screenshots of the ESA along with the context the Supplier’s sales representatives were told to give to them:



[...]

“We also agreed that you would get nothing back from the travel agent at the end of this holiday period. Remember with your fraction at the end of the 19 year period, you will get some money back from the sale, so even if you only got a small part of your initial outlay, say £5,000 it would still be more than you would get renting your holidays from a travel agent, wouldn't it?”

I acknowledge that the slides above set out a “return” that is less than the total cost of the holidays and the “initial outlay”. But that was just an example and, given the way in which it was positioned in the Training Manual, the language did leave open the possibility that the

return could be equal to if not more than the initial outlay. Furthermore, the slides above represent FCM as:

- (1) *The right to receive holiday rights for 19 years whose market value significantly exceeds the costs to a Fractional Club member; plus*
- (2) *A significant financial return at the end of the membership term.*

And to consumers (like Mrs T) who were looking to buy holidays anyway, the comparison the slides make between the costs of Fractional Club Membership and the higher cost of buying holidays on the open market was likely to have suggested to them that the financial return was in fact an overall profit.

I acknowledge that there may not have been a comparison between the expected level of financial return and the purchase price of Fractional Club membership. However, if I were to only concern myself with express efforts to quantify to Mrs T the financial value of the proprietary interest she was offered, I think that would involve taking too narrow a view of the prohibition against marketing and selling timeshares as an investment in 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)).'¹ 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.

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 Fractional membership to prospective members (including Mrs T), 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 Fractional Membership were a good reason to purchase it – which, broadly speaking, is consistent with Mrs T recollections of the sale.

¹ 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>

As I have already mentioned above, Mrs T provided a notarised statement which outlined her recollections of the sales process. As this statement was provided within a relatively short time after the purchase of the Fractional Membership and it is consistent with the training material used by the Supplier, I find this to be both plausible and persuasive account of what took place during the sales presentation. Although much of the statement is devoted to the holiday element, including Mrs T's disappointment with the holiday accommodation provided by the Supplier, there are a number of references to the role that the investment element in her thinking at the time. In particular, her statement describes the way the investment features of the Fractional Membership were presented to her in a very similar manner to the sales training material that I have seen. As the statement was made relatively soon after the purchase was made and the details it contains correlate closely to the training materials, I find the statement to be a plausible and an accurate account of the events that took place.

So, overall, on the balance of probabilities, I think the Supplier's sales representative was likely to have led Mrs T to believe that Fractional membership 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 her either implausible or hard to believe when she says that she was told that she was buying shares in property that, being an investment, may well lead to a financial gain. On the contrary, given everything I have seen so far, I think that is likely to be what Mrs T 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 Mrs T 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 me that, if I am to conclude that a breach of Regulation 14(3) led to a credit relationship between Mrs T and the Lender that was unfair to her and warranted relief as a result, whether the Supplier's breach of Regulation 14(3) led her to enter into the Purchase Agreement and the Credit Agreement is an important consideration.

On my reading of Mrs T testimony, the prospect of a financial gain from Fractional Club membership was an important and motivating factor when she decided to go ahead with her purchase. That doesn't mean she was not interested in holidays. Her own testimony demonstrates that she quite clearly was. And that is not surprising given the nature of the product at the centre of this complaint. But as Mrs T says (plausibly in my view) that Fractional Club membership was marketed and sold to her at the Time of Sale as something that offered her more than just holiday rights, on the balance of probabilities, I think her purchase was motivated by the possibility of an overall profit thanks to below market rate holidays and her share in the Allocated Property – which 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 she ultimately made.

Mrs T has not said or suggested, for example, that she would have pressed ahead with the purchase in question had the Supplier not led her to believe that Fractional Club membership was an appealing investment opportunity. And as she faced the prospect of borrowing and repaying a substantial sum of money while subjecting herself to long-term financial commitments, had she not been encouraged by the prospect of a financial gain from membership of the Fractional Club, I'm not persuaded that she would have pressed ahead with her purchase regardless.

Conclusion

Given the facts and circumstances of this complaint, I think the Lender participated in and perpetuated an unfair credit relationship with Mrs T 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."

The PR responded to the PD and accepted it. The Lender responded to the PD, not accepting it, raising further arguments and asking for a final decision.

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) 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.

The Lender's further comments in response to the PD in the main relate to the issue of whether the credit relationship between Mrs T and the Lender was unfair.

I'll focus here on the Lender's points raised in response to my PD.

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

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

The key point of this complaint is whether the Supplier sold the fractional membership as an investment to Mrs T at the Time of Sale. As I explained in my PD, I found Mrs T's statement to be both a plausible and persuasive record of what happened around the Time of Sale. Having reconsidered this point, I remain satisfied that this is the case.

Consequently, when considering my decision, I continue to accord this statement with an appropriate weight and have concentrated upon the Lender's interpretation of the events it describes.

The Lender explained in its response to my PD that they disagreed with my conclusion that the membership was sold to Mrs T as an investment at the Time of Sale. In addition, it stated that it believed that even if the membership was sold to Mrs T as an investment at the Time of Sale, this was not material to her decision to purchase the membership.

Essentially, the Lender stated that it believed that Mrs T's witness statement indicated that she had made the decision to buy the membership before she was introduced to the Supplier's Client Liaison Officer (CLO). It reached this conclusion primarily due to two sections of Mrs T's statement. The first said:

"Whilst we remained sceptical about buying into a Timeshare the more facts and figures that were presented the more attractive the idea became. We were told that it would be a much cheaper way to take holidays and that by using our points we would be able to return to Mexico at a much greater reduced price than purchasing a holiday from a travel agent. We were told that after a period of time the apartment would be sold and that we would receive a percentage of the sale. It was also confirmed that our family and friends could benefit from and that our percentage could also be passed onto our family so they could continue to benefit from the scheme."

The Lender went on to say that Mrs T said at a later stage of the statement:

“We made the decision to purchase based on the information that had been presented to us at the presentation which were verbal statements backs up with figures on pricing sheet.”

The Lender went on to set out its interpretation of this statement:

“By [Mrs T]’s own admission, they had decided to purchase the Fractional Membership based on the information provided during the presentation and before they were introduced to their CLO. This is important as according to their statement, [Mrs T] were provided with information as to how the membership operated in that “the apartment would be sold and that we would receive a percentage of the sale.” In their explanation of what the presentation entailed, [Mrs T] describe that the membership was sold as a financial investment. There is no mention that this would increase in value, or that they would profit as a result of purchasing the membership. Notably, the term investment is only used once in the section [Mrs T] describe the presentation and this reads as follows:

“...we had been offered a good investment with future holidays all over the world.”

It cannot be assumed that the customers are referring to ‘financial’ investment. In the context of the statement, it appears that it’s more likely [Mrs T] are referring to the investment in future holidays around the world.

I have considered this point most carefully. And having considered the evidence in a holistic manner, I have to disagree with the Lender’s interpretation of Mrs T’s statement. The Lender rightly identified that Mrs T was only introduced to the CLO after she had said that she wanted to purchase the membership. The Lender then appears to conclude that once Mrs T had made the decision to purchase, that the ‘Sales’ process had been completed and that the role of the CLO was simply to complete the contract documentation.

I take a different view, however. I’ll explain why:

Firstly, Mrs T’s statement indicates that at different points in the sales presentation, her commitment to the purchase wavered. For example, after Mrs T stated:

“Whilst we remained sceptical about buying into a Timeshare the more facts and figures that were presented the more attractive the idea became.”

She still went on to say later in the statement:

“We were still reluctant to sign as we had three weddings in the family over the next couple of years”

Secondly, at the point at which Mrs T was introduced to the CLO, the sale had not been completed and no documentation had been presented for her to sign. Mrs T’s statement indicates that during her time with the CLO, she was told, amongst other things:

“...that this was an investment that could only increase in value....”

I consider that this was a clear indication that she was told by the CLO as an employee of the Supplier at the Time of Sale that she could expect to receive a profit from her purchase.

I have considered this point very carefully, along with the Lender’s contention in their response to my PD that earlier mentions of the term ‘investment’ in Mrs T’s statement relate to an ‘investment’ in future holidays.

The Lender also contended that the comments attributed to the CLO should be discounted as Mrs T had already made the decision to purchase the membership when the comments were made and consequently they did not influence her decision to purchase the membership.

I disagree.

On balance, I consider that all the representations Mrs T received up until the contract documentation was produced and signed can best be described as fulfilling a role in the sales process, particularly considering the misgivings and reluctance she expressed in her statement. As such, I find that all representations by employees of the Supplier – including the CLO – had a material impact upon her decision to purchase the membership.

So, ultimately, for the above reasons, along with those I already explained in my PD, I remain persuaded that this was a breach of Regulation 14(3) and was material to Mrs T's purchasing decision. And this renders the credit relationship between Mrs T and the Lender unfair to her for the purposes of Section 140A of the CCA.

Putting things right

Having found that Mrs T would not 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 the Consumer was unfair under section 140A of the CCA, I think it would be fair and reasonable to put her back in the position she would have been in had she not purchased the Fractional Club membership (i.e., not entered into the Purchase Agreement), and therefore not entered into the Credit Agreement, provided Mrs T agrees to assign to the Lender her Fractional Points or hold them on trust for the Lender if that can be achieved.

Here's what I think needs to be done to compensate Mrs T with that being the case – whether or not a court would award such compensation:

- (1) The Lender should refund Mrs T'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 annual management charges Mrs T paid as a result of Fractional Club membership.
- (3) The Lender can deduct:
 - i. The value of any promotional giveaways Mrs T used or took advantage of; and
 - ii. The market value of the holidays* Mrs T took using her Fractional Points.

(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 Mrs T's credit file in connection with the Credit Agreement reported within six years of this decision.

(6) If Mrs T's Fractional Club membership is still in place at the time of this decision, as long as she agrees to hold the benefit of her interest in the Allocated Property for the Lender (or assign it to the Lender if that can be achieved), the Lender must indemnify her against all ongoing liabilities as a result of her 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 Mrs T took using her 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 her 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.

Mitsubishi HC Capital UK Plc trading as Novuna Personal Finance should pay Mrs T the compensation outlined above.

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

Bill Catchpole
Ombudsman