DRN-6270613

The complaint

Mr A complaint is, in essence, that Mitsubishi HC Capital UK Plc trading as Hitachi 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 A was a member of a timeshare provider (the 'Supplier') – having purchased a number of products from it over time. But the product at the centre of this complaint is his membership of a timeshare that I'll call the 'Fractional Club' – which he bought on 9 October 2013 (the 'Time of Sale'). he entered into an agreement with the Supplier to buy 2,920 fractional points at a cost of £10,250 (the 'Purchase Agreement') after trading in his existing European Club membership (a different type of timeshare).

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

Mr A paid for his Fractional Club membership by taking finance of £10,250 from the Lender (the 'Credit Agreement').

Mr A – using a professional representative (the 'PR') – wrote to the Lender on 30 May 2018 (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 Mr A's concerns as a complaint and issued its final response letter on 8 August 2018, rejecting it on every ground.

The complaint was then referred to the Financial Ombudsman Service. It was assessed by an Investigator who, having considered the information on file, rejected the complaint on its merits.

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

I issued my provisional decision on 19 March 2026. And, in summary, I made the following provisional findings (which form part of this final decision):

Section 75 of the CCA: the Supplier's misrepresentations at the Time of Sale

The CCA introduced a regime of connected lender liability under section 75 that affords consumers ("debtors") a right of recourse against lenders that provide the finance for the acquisition of goods or services from third-party merchants ("suppliers") in the event that there is an actionable misrepresentation and/or breach of contract by the supplier.

Certain conditions must be met if the protection afforded to consumers is engaged, including, for instance, the cash price of the purchase and the nature of the arrangements between the parties involved in the transaction. The Lender doesn't dispute that the relevant conditions are met. But for reasons I'll come on to below, it isn't necessary to make any formal findings on them here.

It was said in the Letter of Complaint that Fractional Club membership had been misrepresented by the Supplier at the Time of Sale because Mr A were told or led to believe by the Supplier that Fractional Club membership:

(1) Had a guaranteed end date when that was not true.

(2) Was the only way of releasing himself from his existing membership when that was not true.

(3) Was exclusive to him (and other members) when that was not true.

As I understand it, the sale of the Allocated Property could be postponed in certain circumstances according to the Fractional Club Rules. But Mr A says little to nothing to persuade me that he was given a guarantee by the Supplier that the Allocated Property would be sold on a specific date when such a promise would have been impossible to stand by given the inevitable uncertainty of selling property some way into the future. And as there isn't enough evidence on file to support the PR's allegation that Fractional Club membership had been misrepresented for reasons relating to points (2) and (3), I'm not persuaded that there were representations by the Supplier on the issues in question that constituted false statements of existing fact.

So, while I recognise that Mr A and the PR have concerns about the way in which Fractional Club membership was sold by the Supplier, when looking at the claim under Section 75 of the CCA, I can only consider whether there was a factual and material misrepresentation by the Supplier. For the reasons I've set out above, I'm not persuaded that there was. And that means that I don't think that the Lender acted unreasonably or unfairly when it dealt with this particular Section 75 claim.

Section 75 of the CCA: the Supplier's Breach of Contract

I have already summarised how Section 75 of the CCA works and why it gives consumers a right of recourse against a lender. So, it is not necessary to repeat that here other than to say that, if I find that the Supplier is liable for having breached the Purchase Agreement, the Lender is also liable.

The PR suggests that Mr A could not holiday where and when he wanted to, potentially breaching the Purchase Agreement.

However, like any holiday accommodation, availability was not unlimited – given the higher demand at peak times, like school holidays, for instance. Some of the sales paperwork likely to have been signed by Mr A states that the availability of holidays was/is subject to demand. It also looks like he made use of his fractional points to holiday on a number of occasions. I accept that he may not have been able to take certain holidays. But I have not seen enough to persuade me that the Supplier had breached the terms of the Purchase Agreement.

So, from the evidence I have seen, I do not think the Lender is liable to pay Mr A any compensation for a breach of contract by the Supplier. And with that being the case, I do not think the Lender acted unfairly or unreasonably in relation to this aspect of the complaint either.

The PR made some other points about unfair contract terms and said this was a breach of contract or made the contract unenforceable in its entirety. But that appears to be a matter better considered below.

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

I've already explained why I'm not persuaded that Fractional Club membership was actionably misrepresented by the Supplier at the Time of Sale. But there are other aspects of the sales process that, being the subject of dissatisfaction, I must explore with Section 140A in mind if I'm to consider this complaint in full – which is what I've done next.

The PR says, for instance, that:

1. The right checks weren't carried out before the Lender lent to Mr A.

2. Mr A was pressured by the Supplier into purchasing Fractional Club membership at the Time of Sale.

3. There was one or more unfair contract terms in the Purchase Agreement.

4. It was implied that Fractional Club membership was marketed and sold as investment (which would be a breach of a prohibition on doing so[1]).

5. The Lender paid commission the Supplier but did not disclose this to Mr A.

However, having considered the entirety of the credit relationship between Mr A and the Lender along with all of the circumstances of the complaint, I don't 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 standard of the Supplier's commercial conduct – which includes its sales and marketing practices at the Time of Sale along with any relevant training material.

2. The provision of information by the Supplier at the Time of Sale, including the contractual documentation and disclaimers made by the Supplier.

3. The commission arrangements between the Lender and the Supplier at the Time of Sale and the disclosure of those arrangements.

4. Evidence provided by both parties on what was likely to have been said and/or done at the Time of Sale.

5. The inherent probabilities of the sale given its circumstances.

[1] Regulation 14(3) of the Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010.

6. Where relevant, any existing unfairness from a related credit agreement[2].

I have then considered the impact of these on the fairness of the credit relationship between Mr A and the Lender.

The Supplier's sales & marketing practices at the Time of Sale

While the PR says that the right affordability checks weren't carried out at the Time of Sale, even if I were to find that the Lender failed to do everything it should have when it agreed to lend (and I make no such finding), I would have to be satisfied that the money lent to Mr A was actually unaffordable before also concluding that he lost out as a result and then consider whether the credit relationship with the Lender was unfair to him for this reason. But from the information provided, I am not satisfied that the lending was unaffordable for the Mr A.

I acknowledge that Mr A may have felt weary after a sales process that went on for a long time. But he says little about what was said and/or done by the Supplier during his sales presentation that made him feel as if he had no choice but to purchase Fractional Club membership when he simply did not want to. He was also given a 14-day cooling off period and he have not provided a credible explanation for why he did not cancel his membership during that time. And with all of that being the case, there is insufficient evidence to demonstrate that Mr A made the decision to purchase Fractional Club membership because his ability to exercise that choice was significantly impaired by pressure from the Supplier.

Overall, therefore, I don't think that Mr A credit relationship with the Lender was rendered unfair to him under Section 140A for any of the reasons above. But there is another reason, perhaps the main reason, why the PR says the credit relationship with the Lender was unfair to them. And that's the suggestion that Fractional Club membership was marketed and sold to him as an investment in breach of prohibition against selling timeshares in that way.

<u>The Supplier's alleged breach of Regulation 14(3) of the Timeshare Regulations</u>

The Lender does not dispute, and I am satisfied, that Mr A'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 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 the PR says that the Supplier did exactly that at the Time of Sale.

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.

[2] No such agreement exists in this case.

A share in the Allocated Property clearly constituted an investment as it offered Mr A 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 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 Mr A 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 Fractional Club membership offered him the prospect of a financial gain (i.e., a profit) given the facts and circumstances of *this* complaint.

There is competing evidence in this complaint as to whether Fractional Club membership was marketed and/or sold by the Supplier at the Time of Sale as an investment in breach of regulation 14(3) of the Timeshare Regulations.

On the one hand, it is clear that the Supplier made efforts to avoid specifically describing membership of the Fractional Club as an 'investment' or quantifying to prospective purchasers, such as Mr A, 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.

On the other hand, I acknowledge that the Supplier's sales process left open the possibility that the sales representative may have positioned Fractional Club membership as an investment. So, I accept that it's equally possible that Fractional Club membership was marketed and sold to Mr A as an investment in breach of Regulation 14(3).

However, whether or not there was a breach of the relevant prohibition by the Supplier is not ultimately determinative of the outcome in this complaint for reasons I will come on to shortly. And with that being the case, it's not necessary to make a formal finding on that particular issue for the purposes of this decision.

Would the credit relationship between the Lender and Mr A have been rendered unfair to him had there been a breach of Regulation 14(3) of the Timeshare Regulations?

Having found that it was possible 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 A 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 Mr A 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.

But on my reading of the evidence before me, the prospect of a financial gain from Fractional Club membership was not an important and motivating factor when Mr A decided to go ahead with his purchase.

The Letter of Complaint made what appears to be generic allegations including about Fractional Club being marketed or sold as an investment. I say these are generic because the exact same letter (barring the date and location of sale) and allegations have been used in dozens (if not hundreds) of complaints made by the PR. Indeed, it refers to the membership period being 15 years when it was 19 years. So, it appears that the PR has used a generic letter that it has not tailored to Mr A's circumstances (except the date and location of sale) or recollections. That being the case, I do not think it would be fair or reasonable for me to take the Letter of Complaint and the allegations within it as being based on the specific recollections of Mr A in this case. And I do not think can be considered reliable evidence of what happened at the Time of Sale…

[SECTION REMOVED – In this section of my provisional decision, which it is not necessary for me include here, I considered a letter from Mr A which was provided by the PR on 7 November 2023 after our Investigator requested a statement from him setting out his recollections of what happened at the Time of Sale. I pointed out that in their assessment our Investigator expressed concerns about the letter and that the PR did not acknowledge or comment on those concerns when responding to the assessment. In light of that, I said that I shared those concerns, and that alongside the timing of when the statement was provided and that the letter had not been provided earlier in the complaint process, I did not find the letter to be sufficiently plausible and persuasive such that it would justify me finding that any breach of Regulation 14(3) of the Timeshare Regulations by the Supplier at the Time of Sale was material to Mr A's decision to purchase Fractional Club membership – or that this resulted in the credit relationship between Mr A and the Lender being unfair to him.]

… I have no reason to be persuaded that Mr A would not have pressed ahead with his purchase whether or not there had been a breach of Regulation 14(3). And for that reason, I do not think the credit relationship between Mr A and the Lender was unfair to him even if the Supplier had breached Regulation 14(3).

The provision of information by the Supplier at the Time of Sale

The PR says that Mr A were not given sufficient information at the Time of Sale by the Supplier about the ongoing costs of Fractional Club membership. The PR also says that, because some of the terms of the Purchase Agreement weren't individually negotiated, they were unfair contract terms as were the terms governing the ongoing costs of membership and consequences of non-payment.

As I've already indicated, the case law on Section 140A makes it clear that it does not automatically follow that regulatory breaches create unfairness for the purposes of the unfair relationship provisions. The extent to which such mistakes render a credit relationship unfair must also be determined according to their impact on the complainant.

I acknowledge that it is also possible that the Supplier did not give Mr A sufficient information, in good time, on the various charges he could have been subject to as Fractional Club members in order to satisfy the requirements of Regulation 12 of the 2010 Timeshare Regulations (which was concerned with the provision of 'key information'). But even if that was the case, I cannot see that the ongoing costs of membership were applied unfairly in practice. And as neither Mr A nor the PR have persuaded me that he would not have pressed ahead with his purchase had the finer details of the Fractional Club's ongoing costs been disclosed by the Supplier in compliance with Regulation 12, I cannot see why any failings in that regard are likely to be material to the outcome of this complaint given its fact and circumstances.

As for the PR's argument that there were one or more unfair contract terms in the Purchase Agreement, I can't see that any such terms were operated unfairly against Mr A in practice, nor that any such terms led him to behave in a certain way to his detriment. And with that being the case, I'm not persuaded that any of the terms governing Fractional Club membership are likely to have led to an unfairness that warrants a remedy even if they could be said to be unfair contract terms, which I make no formal finding on.

[SECTION REMOVED – In this section of my provisional decision, which there is no need to include here, I dealt with the complaint about whether the commercial (including commission) arrangements between the Lender and Supplier created an unfair credit relationship between Mr A and the Lender. But when responding to my provisional decision the PR withdrew those concerns.]

Section 140A: Conclusion

Given all the factors I've looked at in this part of my decision, and having taken all of them into account, I'm not persuaded that the credit relationship between Mr A and the Lender under the Credit Agreement and related Purchase Agreement was unfair to him. And I don't think it would be fair or reasonable that I uphold this complaint on that basis.

[SECTION REMOVED – In this section of my provisional decision, which there is no need to include here, I dealt with the alternative grounds for complaint relating to the commercial (including commission) arrangements between the Lender and Supplier, but when responding to my provisional decision the PR withdrew those concerns.]

Overall Conclusion

In conclusion, given the facts and circumstances of this complaint, I do not think that the Lender acted unfairly or unreasonably when it dealt with Mr A Section 75 claims. I am not persuaded that the Lender was party to a credit relationship with Mr A under the Credit Agreement and related Purchase Agreement that was unfair to him for the purposes of Section 140A of the CCA. And having taken everything into account, I see no other reason why it would be fair or reasonable to direct the Lender to compensate him.

So, in summary, I wasn't persuaded by any of the arguments put forward for why the credit relationship between Mr A and the Lender was unfair to him under Section 140A of the CCA. And I couldn't see any other reason why it would be fair or reasonable to direct the Lender to compensate Mr A – all of which led me to provisionally conclude that there was no basis on which to uphold the complaint.

The Lender accepted my provisional decision. The PR disagreed with my overall conclusion. When doing that, it provided submissions which, while primarily concerned with the suggestion that Mr A Fractional Club membership had been marketed and sold as an investment in contravention of a prohibition on selling timeshares in that way, included allegations of fraudulent misrepresentation on the basis that he was told by the Supplier at the Time of Sale that:

1. He was buying part ownership of a physical property;

2. Fractional Club membership was an investment;

3. The Allocated Property would be sold; and

4. He would receive a share of the net sales proceeds of sale when the Allocated Property is sold.

The PR withdrew its concerns about payment of commission to the Supplier by the Lender.

As a result, the complaint was passed back to me for further thought and my Final Decision.

The Legal and Regulatory Context

The legal and regulatory context that I think is relevant to this complaint has been shared in several hundred published decisions on very similar complaints, as well as in previous correspondence with the parties. So, there's no need for me to set this out again in detail here. I simply remind the parties that our rules[3] say that in considering what is fair and reasonable in all the circumstances of the complaint, I will take into account: relevant (i) law and regulations; (ii) regulators' rules, guidance and standards; and (iii) codes of practice; and (when appropriate), what I consider to have been good industry practice at the relevant time.

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 afresh, I'm not persuaded to depart from my provisional decision for reasons I'll now explain.

Before I do, I want to make it clear that I recognise that this complaint, when originally made, was wide ranging and made on a number of different grounds - including:

(1) Misrepresentations by the Supplier at the Time of Sale giving Mr A a claim against the Lender under Section 75 of the CCA, which the Lender failed to accept and pay.

(2) A breach of contract by the Supplier giving Mr A a claim against the Lender under Section 75 of the CCA, which the Lender failed to accept and pay.

(3) The Lender being party to an unfair credit relationship under the Credit Agreement and related Purchase Agreement for the purposes of Section 140A of the CCA.

However, as the PR's more concise response to my provisional decision relates, in the main, to (3), if I haven't been provided with new arguments and/or evidence to consider in relation

[3] Specifically Rule 3.6.4 in the Dispute Resolution Rules found in the Financial Conduct Authority's Handbook for Rules and Guidance.

to (1) or (2), I see no reason to change or add to my conclusions (as set out in the summary of my provisional decision above) in relation to them.

Indeed, as I said in my provisional decision, my role as an Ombudsman is to decide what's fair and reasonable in the circumstances of this complaint – rather than address every single point that's been made. And with that being the case, while I have read all of the PR's submissions in full, if I have not commented on, or referred to, something that either party has said, that does not mean I have not considered it.

Section 75 of the CCA: the Supplier's misrepresentations at the Time of Sale

It was argued by the PR, when this complaint was first made, that the Supplier misrepresented Fractional Club membership at the Time of the Sale. The reasons for this aspect of this complaint at that time were addressed in my provisional decision. And I see no reason to change or add to those. But in in response to my provisional decision, the PR argues that Fractional Club membership wasn't worth enough to make Mr A profit and, as such, the following representations by the Supplier were fraudulent:

1. He was buying part ownership of a physical property;

2. Fractional Club membership was an investment;

3. The Allocated Property would be sold; and

4. He would receive a share of the net sales proceeds of sale when the Allocated Property is sold.

The PR takes that view because it says the evidence suggests that (1) the Lender hasn't provided any evidence that the Allocated Property exists or that it will sell in the future (making it unlikely that Mr A will receive anything from his share in it) and, (3) by the PR's own calculations, given the initial and ongoing costs of Fractional Club membership, it was never possible to make a profit from the sale of the Allocated Property.

The law relating to misrepresentation is a combination of the common law, equity and statute – though, as I understand it, the Misrepresentation Act 1967 didn't alter the rules as to what constitutes an effective misrepresentation. Summarising the relevant pages in *Chitty on Contracts*, a material and actionable misrepresentation is an untrue statement of existing fact or law made by one party (or his agent for the purposes of passing on the representation, acting within the scope of his authority) to another party that induced that party to enter into a contract.

However, a mere statement of opinion, rather than fact or law, which proves to be unfounded, isn't a misrepresentation unless the opinion amounts to a statement of fact and it can be proved that the person who gave it did not hold it or could not reasonably have held it. It also needs to be shown that the other party understood and relied on the implied factual misrepresentation.

Telling prospective members that they were investing their money because they were buying a fraction or share of one of the Supplier's properties was not untrue – nor was it untrue to tell prospective members that they would receive *some* money when the allocated property is sold. After all, Mr A'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 as the PR knows, while the term "investment" is not defined in the Timeshare Regulations, it was agreed by the parties in *Shawbrook & BPF v FOS* 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*" (see paragraph 56).

Yet none of the contractual paperwork made any promises that a profit might be made.

As I said in my provisional decision, the Supplier's training material left open the possibility that the sales representative may have positioned Fractional Club membership as an investment. So, I accept that it's possible that Fractional Club membership was marketed and sold to Mr A as an investment orally.

Mr A says little about what was said, by whom and in what circumstances for the purposes of determining whether representations by the Supplier amounted to false statements of existing fact rather than expressions of honestly held opinions about the likely value of the Allocated Property in the future. And while the PR's own calculations might cast some doubt over the likelihood of the Allocated Property being sold at a profit given the initial and ongoing costs of it to Mr A, there isn't enough evidence to persuade me that the relevant sales representative(s) would have carried out that sort of calculation at the Time of Sale or would otherwise have had information that would indicate that they knew or ought reasonably to have known at the time that any such representations weren't true.

And while the PR might question the exact legal mechanism used to give prospective members an interest in allocated properties, that does not change the fact that the shares of members (like Mr A) were clearly the purchase of a share of the net sale proceeds of a specific property in a specific resort.

I'm not persuaded, therefore, by the allegations of fraudulent misrepresentation from the PR. And with that being the case, they too aren't reasons to uphold this complaint and direct the Lender to compensate Mr A.

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

I've already explained why, in light of the PR's latest allegations of fraudulent misrepresentation, I'm not persuaded that Fractional Club membership was actionably misrepresented by the Supplier at the Time of Sale. And it is for those reasons that I don't think the credit relationship between Mr A and the Lender was rendered unfair to him on the basis that membership had been misrepresented.

However, there are, of course, other reasons why the PR argues that the credit relationship in question was unfair. But having reconsidered the entirety of that relationship along with everything that has now been said and/or provided by both sides, I still don't think the credit relationship between Mr A and the Lender was likely to have been rendered unfair to him for the purposes of Section 140A. When coming to that conclusion, I have looked again at:

1. The standard of the Supplier's commercial conduct – which includes its sales and marketing practices at the Time of Sale along with any relevant training material;

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;

4. The inherent probabilities of the sale given its circumstances; and, when relevant

5. Any existing unfairness from a related credit agreement.

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

As I said in my provisional decision, there is competing evidence in this complaint as to whether the Fractional Club membership was marketed and/or sold by the Supplier at the Time of Sale as an investment in breach of Regulation 14(3) of the Timeshare Regulations. I acknowledged that it was possible that Fractional Club membership was marketed and sold to Mr A as an investment in breach of Regulation 14(3). A view I still hold.

But I also thought and still think that it isn't necessary to make a formal finding on that particular issue for the purposes of my determination on this complaint because a breach of Regulation 14(3) by the Supplier is not itself determinative of the outcome in this complaint unless the impact of such a breach suggested otherwise.

The PR disagrees with that and cites the judgment of Mrs Justice Collins Rice in *Shawbrook & BPF v FOS* in support – saying that she found that the selling of a timeshare as an investment (i.e. in a breach of Regulation 14(3) of the Timeshare Regulations) was, itself, sufficient to create an unfair credit relationship.

However, on my reading of *Shawbrook & BPF v FOS*, Mrs Justice Collins Rice didn't find that a breach of Regulation14(3) of the Timeshare Regulations was *"causative of the legal relations entered into".* She recognised that such a breach was *"conduct that knocks away the central consumer protection safeguard"*, but she went on to say that it was the ombudsmen behind the two reviewed decisions who found that such a breach was, given the facts and circumstances of the relevant complaints, causative of the consumers in question purchasing their timeshares and taking out loans to do so.

What's more, the Supreme Court's judgment in *Plevin* makes it clear that regulatory breaches do not automatically create unfairness for the purposes of Section 140A. Such breaches and their consequences (if there are any) must be considered in the round, rather than in a narrow or technical way.

I am also mindful of what HHJ Waksman QC (as he then was) and HHJ Worster had to say in *Carney v NM Rothschild & Sons Ltd* [2018] EWHC 958 ('*Carney*') and *Kerrigan v Elevate Credit International Ltd* [2020] EWHC 2169 (Comm) ('*Kerrigan*') (respectively) on causation.

In *Carney*, HHJ Waksman QC said the following in paragraph 51:

> *"[…] In cases of wrong advice and misrepresentation, it would be odd if any relief could be considered if they did not have at least some material impact on the debtor when deciding whether or not to enter the agreement. […] in a case like the one before me, if in fact the debtors would have entered into the agreement in any event, this must surely count against a finding of unfair relationship under s140A. […]"*

And in *Kerrigan*, HHJ Worster said this in paragraphs 213 and 214:

> *"[…] The terms of section 140A(1) CCA do not impose a requirement of "causation" in the sense that the debtor must show that a breach caused a loss for an award of substantial damages to be made. The focus is on the unfairness of the relationship, and the court's approach to the granting of relief is informed by that, rather than by a demonstration that a particular act caused a particular loss. Section 140A(1) provides*

*only that the court **may** make an order **if** it determines that the relationship is unfair to the debtor. […]*

[…] There is a link between (i) the failings of the creditor which lead to the unfairness in the relationship, (ii) the unfairness itself, and (iii) the relief. It is not to be analysed in the sort of linear terms which arise when considering causation proper. The court is to have regard to all the relevant circumstances when determining whether the relationship is unfair, and the same sort of approach applies when considering what relief is required to remedy that unfairness. […]"

So, it still seems to me that, if I am to conclude that a breach of Regulation 14(3) led to a credit relationship between Mr A 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.

Indeed, doing that accords with common sense, for if events would have unfolded in the same way whether or not such a pre-contractual breach had occurred, it would be difficult to attribute any particular importance to the breach when deciding whether an unfair debtor-creditor relationship ensued, or whether a remedy is appropriate.

If there had been a breach of Regulation 14(3), would it have rendered the credit relationship between Mr A and the Lender unfair to him?

Having found that it was possible that the Supplier breached Regulation 14(3) of the Timeshare Regulations at the Time of Sale, I have considered (as I did in my provisional decision) what impact that breach (if there was one) had on the fairness of the credit relationship between Mr A and the Lender under the Credit Agreement and related Purchase Agreement.

And on my re-reading of the evidence before me, I'm still not persuaded that the prospect of a financial gain from Fractional Club membership was an important and motivating factor when Mr A decided to go ahead with the purchase, such that he would have made an entirely different purchasing decision had there not been a breach of Regulation 14(3).

The PR has said it now relies exclusively on the Letter of Complaint to *"establish the foundation of this complaint"*. In effect, it no longer relies on the letter from Mr A which I discussed in my provisional decision. But in my provisional decision I set out my concerns about the Letter of Complaint and why I did not think it could be considered reliable evidence of what happened at the Time of Sale. My thoughts on that have not changed, and so I do not think it is sufficient to justify me concluding that the prospect of a financial gain from Fractional Club membership was an important and motivating factor when Mr A decided to go ahead with the purchase.

When responding to my provisional decision, the PR also set out its calculation of the total cost of Fractional Club membership assuming Mr A paid off the loan over its full term and paid annual management fees until the Allocated Property's expected sale date. It then argued that paying so much for one week of holiday per year over the membership term would be absurd unless motivated by the prospect of making a profit. But I have no reason to think that the Supplier or Mr A made a similar calculation at the Time of Sale. Or that Mr A's Fractional points would only have been enough to purchase one week of holiday per year. Overall, I do not find the PR's argument on this point to be persuasive.

On balance, therefore, for the reasons I've set out above, I don't think the credit relationship between Mr A and the Lender was unfair to him even if the Supplier had breached Regulation 14(3).

The PR's other concerns

The PR has suggested that it is necessary to obtain more information about the Allocated Property, such as the title deeds and an independent valuation. This seems to be motivated by the PR's suspicion that the Allocated Property will never be sold. But I do not think any additional information is required for me to make a fair and reasonable decision in this case. I have no compelling reason to suspect that the Allocated Property will not be sold and the sale proceeds distributed to the Fractional Owners – as set out in the Fractional Club documentation.

Conclusion

Having adopted my provisional findings, and reconsidered the facts and circumstances of this complaint, I still I don't think the Lender acted unfairly or unreasonably when it dealt with Mr A's section 75 claims. I'm still not persuaded that the Lender was party to a credit relationship with Mr A that was unfair to him for the purposes of section 140A of the CCA. And having taken everything into account, I see no other reason why it would be fair or reasonable for me to direct the Lender to compensate Mr A.

My final decision

For the reasons I've explained, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 30 April 2026.

Phillip Lai-Fang
Ombudsman