DRN-6278464

Financial Ombudsman Service

The complaint

Mr I’s complaint is, in essence, that Mitsubishi HC Capital UK PLC (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 a claim under Section 75 of the CCA.

What happened

I issued a provisional decision on this case on 12 March 2026, in which I set out the background to the matter and the conclusions I was minded to arrive at. A copy of that provisional decision is appended to and forms part of this final decision, so it’s not necessary for me to go over all the details again. However, to summarise briefly:

- Mr I purchased a membership of a timeshare from a timeshare provider (the “Supplier”) on 7 October 2018 (the “Time of Sale”). He entered an agreement with the Supplier to buy 1,040 points in the Supplier’s “Fractional Club” for £15,430 (the “Purchase Agreement”). The Fractional Club was a kind of asset-backed timeshare that entitled Mr I to a share in the net sale proceeds of a named property (the “Allocated Property”) at the end of the membership term.

- The purchase was financed by a loan (the “Credit Agreement”) of £15,430 with the Lender, which was arranged by and paid to the Supplier.

- Mr I later complained to the Lender about various matters including misrepresentations by the Supplier giving him a claim against the Lender under Section 75 of the CCA, and the Lender having participated in a credit relationship that was unfair to him within the meaning of Section 140A of the CCA. The Lender rejected the complaint.

In my provisional decision I concluded the complaint ought to be upheld. The reasons are explained in full in the appended document, but to summarise again:

- I thought it was likely the Supplier had breached Regulation 14(3) of the Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2020 (the “Timeshare Regulations”) by marketing and selling the timeshare to Mr I as an investment, concluding this was likely due to a combination of Mr I’s recollections of what had occurred at the Time of Sale, and the sales and training materials for the Supplier’s sales representatives which had been in use at the Time of Sale and which, in my view, were consistent with the Supplier having framed the product in a way which at least implied that the prospect of financial returns (in the sense of profit) was a good reason to buy it.

- I thought the Supplier's improper marketing of the timeshare had had a material impact on Mr I's decision to go ahead with the purchase on the day, committing him to the Purchase Agreement and Credit Agreements, and that this had rendered his credit relationship with the Lender unfair to him.

I went on to consider what fair compensation would look like in the circumstances. Once again, the details can be found in the appended provisional decision, but in essence I thought fair compensation would involve unwinding the purchase as far as was practicable, including refunds of payments made along with timeshare management fees and compensatory interest. I considered any benefits Mr I had received from the purchase needed to be offset against any refunds he was due, and that the Lender should make appropriate amendments to his credit file and indemnify him against future liability with respect to the timeshare.

I asked the parties to the complaint to respond to the provisional decision. Mr I accepted the provisional decision. The Lender said it disagreed with the provisional decision. I think I could fairly summarise its arguments as follows:

- There was evidence that Mr I had not been financially motivated when making the purchase. This included the fact he had tried to cancel the membership two months after purchase. It considered a further attempt by Mr I's fiancée to cancel the membership in 2020 was significant. Mr I and his fiancée knew at that point that they couldn't cancel the membership and be released from the Credit Agreement, but another attempt to cancel was made. There was a lack of any concern expressed about losing their investment, which suggested either that the product hadn't been marketed to them in that way, or that this hadn't been important to their purchasing decision, or both.

- This kind of evidence should be preferred and given more weight than witness statements produced six years after the Time of Sale, and which have been potentially influenced by *Shawbrook & BPF v. FOS*[1], whether that influence is conscious or not.

- It disagreed with my view that it was unsurprising that Mr I had not mentioned the investment element of the purchase when trying to cancel or withdraw in December 2018. If it was the case, as Mr I had claimed, that he *"solely saw [the product] as an investment and potential to grow financially",* then it would have expected him to have raised concerns about this during any discussions around cancellation or subsequently. He did not, and this suggests it wasn't important to him.

- Indeed, Mr I's communication by email to the Supplier referred to it not making sense for him to be a member of the Fractional Club as a single person. He doesn't refer to any loss of potential financial returns. The evidence points towards him having made the purchase initially for reasons relating to holidays.

- While Mr I might have consistently said since 2018 that the Supplier told him he could cancel at any time, this consistency over one detail didn't mean the rest of his statement should be accepted without question or corroborating evidence.

- Mr I's descriptions of how the investment aspect of the product worked were factually incorrect – he referred to things like getting a capital return each year, and that the

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[1] *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)

membership was like a share *"that can go up or down like a stock market"*. This wasn't consistent with my own views on how the product was likely to have been marketed.

- There was no independent evidence the timeshare was presented as an investment that could lead to a profit. While I had relied on the Supplier's sales presentation and training materials to support a view that the product could have been sold in this way, Mr I didn't make any reference to such a presentation or to any explanation given during it that had positioned the product as an investment.

- Mr I had signed to agree to disclaimers at the Time of Sale which stated the Supplier offered no resale programme and did not repurchase memberships. It didn't think it likely Mr I would have been told anything different.

The case has now been returned to me to decide.

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.

Having done so, I've arrived at the same conclusions I reached in the appended provisional decision, and for essentially the same reasons. As I said in that decision, my role as an Ombudsman is not to address every single point that has been made. Instead, it is to decide what is fair and reasonable in the circumstances of this complaint. So if I don't mention something that either party has mentioned then it does not mean that I have not considered it. It may be, for example, that it is a point which was already addressed in the provisional decision. The Lender's point that Mr I signed to agree to certain disclaimers, for example, was something which I have already addressed. The Lender has said nothing I think is *new* about this, and so I don't propose to address this point again.

The focus of the Lender's disagreement with the provisional decision is on the credibility and accuracy of Mr I's witness statement, and what meaning should be given to his words and actions after the Time of Sale. These are, essentially, the same points the Lender (or the Supplier) made prior to the provisional decision, but framed differently or which highlight different things about Mr I's testimony which it thinks weaken his case.

As I said in my provisional decision, I am alive to the possibility that Mr I's witness statement may have been influenced by later events such as the case of *Shawbrook & BPF v. FOS*. I also said in that decision that it would not be reasonable simply to dismiss Mr I's witness statement because it seems to have been produced after these later events.

I went on to consider objections which had been raised to that witness statement, but I didn't think these objections had merit. Having considered all the evidence, I didn't think I could conclude the words in the witness statement were not Mr I's, or that minor disputed details such as whether he had eaten a breakfast buffet at the Time of Sale, were really significant to the question of the accuracy of his recall. I thought Mr I clearly recalled being told or given the impression by the Supplier's representatives that the Fractional Club product was something that would give him great holiday benefits but also be an investment that he could be sold later at a higher price – realising a financial gain. I did think that Mr I had, perhaps, exaggerated exactly how important the investment aspect of the product was to him. I didn't think it was likely to have been his sole reason for buying, as he had put it, but I thought it was important enough to have been material to his purchasing decision. The Lender has made the point in response to my provisional decision that it thinks Mr I bought the Fractional Club membership for holiday-related reasons. I agree that this was clearly a part

of why he bought the product, and I recognised this in my provisional decision, but that doesn't mean that he didn't have other reasons for going ahead with the purchase that were material.

The Lender has now argued that because Mr I recalled the product being something that would give him a return each year and that he had a share "that can go up or down like a stock market", that this undermines the credibility of his witness statement because that isn't how the product is presented in my analysis of the Supplier's sales and marketing materials, nor is it how the product works in reality. I note that Mr I doesn't say in his witness statement that the Supplier told him this about the product specifically. To quote the relevant part of his statement in full:

"The fractional ownership as it was presented would save us approximately £3000 a year and if we would sell that in the future the interest will go up and we could sell for a higher price. We did not know what they meant by fractional property ownership. We believed this is like owning a share in a company that bring capital reward at the end of the year, it can go up in value or down like in a stock market."

I don't think confusion on Mr I's part over the underlying mechanism of the investment aspect of the Fractional Club product, undermines the credibility of his recollections of what he was told by the Supplier. But he does say that the Supplier told him he *"could sell for a higher price"* and *"At the termination of the 19-year contract they said we could almost double the money…"* So I don't agree with the Lender that Mr I has not referred to any positioning by the Supplier of the product as an investment.

Regarding the later actions of Mr I and his fiancée, in contacting the Supplier to try to withdraw from the membership two months after the Time of Sale, and then again in 2020, I still don't think these significantly undermine the argument that the Fractional Club product's investment features were material to Mr I's purchasing decision. As I said in my provisional decision, given Mr I and his fiancée didn't stand to lose anything if they achieved their apparent aim of unwinding the purchase, in line with what they believed had been promised by the Supplier at the Time of Sale, I'd not necessarily have expected the investment features of the product to be mentioned during these interactions. And while I take the Lender's point that, by 2020, Mr I and his fiancée knew the Supplier's position was that it wouldn't allow them to withdraw, that doesn't necessarily mean that they wouldn't try to do so again. It's apparent Mr I and his fiancée felt this was an aspect of the purchase which had been mis-sold, and it appears from the Supplier's note that Mr I's fiancée brought this up again in 2020, complaining that the Supplier hadn't explained the long-term obligations of the Credit Agreement. Mr I's fiancée also seems to have suggested that she and Mr I were constrained by financial difficulties. Overall, I don't see either the 2018 or 2020 withdrawal/cancellation attempts as being obviously inconsistent with the prospect of the Fractional Club product being an investment, having been a material factor in Mr I's decision to enter the Purchase Agreement and related Credit Agreement.

Having considered all the evidence and arguments again, I remain of the view that the Supplier most likely marketed and/or sold the Fractional Club membership to Mr I as an investment in breach of the regulations on selling timeshares, and that this played a material part in his decision to go ahead with the purchase, rendering the resulting credit relationship with the Lender, unfair to him and warranting compensation.

Fair Compensation

My conclusions regarding the matter of compensation are the same as they were in my provisional decision, so the following text is unchanged from the appended document:

Having found that Mr I 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 him back in the position he would have been in had he not purchased the Fractional Club membership (i.e., not entered into the Purchase Agreement), and therefore not entered into the Credit Agreement, provided Mr I and the joint purchaser agree to assign to the Lender their 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 Mr I with that being the case – whether or not a court would award such compensation:

(1) The Lender should refund Mr I'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 Mr I paid as a result of Fractional Club membership.

(3) The Lender can deduct:

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

   ii. The market value of the holidays* Mr I took using his 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 Mr I's credit file in connection with the Credit Agreement reported within six years of this decision.

(6) If Mr I's Fractional Club membership is still in place at the time of this decision, as long as he and the joint purchaser agree to hold the benefit of their interest in the Allocated Property for the Lender (or assign it to the Lender if that can be achieved), the Lender must indemnify them against all ongoing liabilities as a result of their Fractional Club membership.

   *I recognise that it can be difficult to reasonably and reliably determine the market value of holidays when they were taken a long time ago and might not have been available on the open market. So, if it isn't practical or possible to determine the market value of the holidays Mr I 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 explained above, and in the appended provisional decision, I uphold Mr I's complaint and direct Mitsubishi HC Capital UK Plc to take the actions set out in the "Fair Compensation" section of this final decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr I to accept or reject my decision before 6 May 2026.

Will Culley
Ombudsman

COPY OF PROVISIONAL DECISION

I've considered the relevant information about this complaint.

Having done so, I've arrived at a different set of conclusions to our Investigator, so I'm issuing this provisional decision to allow the parties to the complaint a further opportunity to make submissions.

The deadline for both parties to provide any further comments or evidence for me to consider is **26 March 2026**. Unless the information changes my mind, my final decision is likely to be along the following lines.

If Mitsubishi HC Capital UK PLC trading as Novuna Consumer Finance accepts my provisional decision, it should let me know. If Mr I also accepts, I may arrange for the complaint to be closed as resolved at this stage without a final decision.

The complaint

Mr I's complaint is, in essence, that Mitsubishi HC Capital UK PLC (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 a claim under Section 75 of the CCA.

What happened

Mr I purchased a membership of a timeshare (the 'Fractional Club') from a timeshare provider (the 'Supplier') on 7 October 2018 (the 'Time of Sale'). He entered into an agreement with the Supplier to buy 1,040 fractional points at a cost of £15,430 (the 'Purchase Agreement'). This was Mr I's first and only purchase from the Supplier, having previously declined to buy a 'Trial' membership at a meeting in the UK a few months earlier.

Fractional Club membership was asset backed – which meant it gave Mr I 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 I paid for his Fractional Club membership by taking finance of £15,430 from the Lender in his name (the 'Credit Agreement'). The Purchase Agreement was in both his name and the name of his fiancée, but for the purposes of this decision I will refer to Mr I only.

Mr I – using a professional representative (the 'PR') – wrote to the Lender on 12 July 2024 (the 'Letter of Complaint') to complain about:

1. Misrepresentations by the Supplier at the Time of Sale giving him a claim against the Lender under Section 75 of the CCA, which the Lender failed to accept and pay.
2. 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.
3. The decision to lend being irresponsible because the Lender did not carry out the right creditworthiness assessment.
4. The Credit Agreement being unenforceable because it was not arranged by a credit broker regulated by the Financial Conduct Authority ('FCA') to carry out such an activity.

(1) <u>Section 75 of the CCA: the Supplier's misrepresentations at the Time of Sale</u>

Mr I says that the Supplier made a number of pre-contractual misrepresentations at the Time of Sale – namely that the Supplier:

1. told him that he was buying an interest in a specific piece of "real property" when that was not true.
2. told him that Fractional Club membership was an "investment" that would increase in value when that was not true.
3. told him that he would be able to have access to "the holiday apartment" at any time all year round.
4. failed to tell him that the annual maintenance fees associated with the membership would increase.

Mr I says that he has a claim against the Supplier in respect of one or more of the misrepresentations set out above, and therefore, under Section 75 of the CCA, he has a like claim against the Lender, who, with the Supplier, is jointly and severally liable to him.

(2) <u>Section 140A of the CCA: the Lender's participation in an unfair credit relationship</u>

The Letter of Complaint set out several reasons why Mr I says that the credit relationship between him and the Lender was unfair to him under Section 140A of the CCA. In summary, they include the following:

1. Fractional Club membership was marketed and sold to him as an investment in breach of regulation 14(3) of the Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010 (the 'Timeshare Regulations').
2. The Supplier failed to provide complete and accurate information about the fees associated with the Fractional Club membership.
3. The Purchase Agreement contained terms that were unfair to him, including terms which allowed the Supplier to repossess the Fractional Club membership for minor breaches of the agreement.
4. He was pressured into purchasing Fractional Club membership by the Supplier.
5. The Lender paid the Supplier a commission for arranging the Credit Agreement that was not properly disclosed to him.

The Lender dealt with Mr I's concerns as a complaint and issued its final response letter on 22 July 2024, rejecting it on every ground.

Mr I then referred the complaint to the Financial Ombudsman Service. It was assessed by an Investigator who, having considered the information on file, didn't think it should be upheld.

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

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 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 here.

What I've provisionally decided – and why

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

And having done that, I 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 Mr I 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 Mr I's complaint, it isn't necessary to make formal findings on all of them. This includes the allegation that the Lender made an irresponsible lending decision, or that the Credit Agreement was arranged by an unregulated credit broker. And that's because, even if any other aspect of the complaint ought to succeed, the redress I'm currently proposing puts Mr I in the same or a better position than he would be if the redress was limited to what would have been fair had any other part of the complaint been upheld.

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

Having considered the entirety of the credit relationship between Mr I 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; and
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.

I have then considered the impact of these on the fairness of the credit relationship between

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

The Lender does not dispute, and I am satisfied, that Mr I'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 Mr I says that the Supplier did exactly that at the Time of Sale. In a witness statement, he recalled the following (my emphasis in bold):

"We did not know at the time anything about fractional ownership and how's that work, she attempted to explain to us but failing to mention that this is something we cannot get out of. The fractional ownership did not mean anything to us at that time, we did not know anything about what it is, or the legal meaning. ***We were under impression at the time that we will buy a percentage of the resort and we looked at it as an investment, being under the impression we could sell it later and make profit.*** *My fiancée and I asked if we decide later in time to sell the fractional membership what we need to do. At that time a manager joined the meeting and they both said we can withdraw at any time if we wish to sell it back to them or someone else."*

And:

"The fractional ownership as it was presented would save us approximately £3000 a year and ***if we would sell that in the future the interest will go up and we could sell for a higher price.*** *We did not know what they meant by fractional property ownership. We believed this is like owning a share in a company that bring capital reward at the end of the year, it can go up in value or down like in a stock market. Also, we believed at the time we could sell our share at any point in time if we would like to. We could not distinguish the difference between what is fractional ownership and the conventional holiday membership, we believed that we would purchase a share and being members allow us to fully benefit from holidays at limitless locations, but also owning something valuable. The maintenance fees were not explained fully, leave us under the impression that is something optional if we wish to pay in the future for extra comfort.* ***At the termination of the 19-year contract they said we could almost double the money as the business is already planning to expand, building new resorts every few years, but also the value of the resort will grow in value over time and people will want to invest in resorts.*** *We solely saw this as an investment and potential to grow financially."*

Mr I alleges therefore, that the Supplier breached Regulation 14(3) at the Time of Sale because:

(1) There were two aspects to his Fractional Club membership: holiday rights and a profit on the sale of the Allocated Property.
(2) He was told by the Supplier that he would get more back than he'd paid during the sale of Fractional Club membership.
(3) He was told by the Supplier that Fractional Club membership was the type of investment that would be likely to increase in value.

The term "investment" is not defined in the Timeshare Regulations. In *Shawbrook & BPF v FOS*, the parties agreed that, by reference to the decided authorities, "*an investment is a transaction in which money or other property is laid out in the expectation or hope of financial gain or profit*" at [56]. I will use the same definition.

Mr I'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 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 <u>as an investment</u>. 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 I 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 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 Mr I, 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 Fractional Club membership was for the primary purpose of holidays and that the Supplier made no representation as to its future price or value.

On the other hand, other disclaimers seemed to suggest that the Supplier expected its representatives to talk about Fractional Club membership in the context of investment. For example, one disclaimer cautioned that the Supplier's representatives were *"not licensed investment advisors"* and *"all information has been obtained solely from their own experiences as investors and is provided as general information only"*. So to some extent I think the Supplier's paperwork at the Time of Sale contained mixed messages on the subject of whether the product was to be viewed as an investment.

In any case, weighing up what happened in practice is, in my view, rarely as simple as looking at the contemporaneous paperwork. And there are a number of strands to Mr I's allegation that the Supplier breached Regulation 14(3) at the Time of Sale, including (1) that membership of the Fractional Club was described as an *"investment*" in several different contexts and (2) that membership of the Fractional Club could make him a financial gain and/or would retain or increase in value.

So, I have considered:

(1) whether it is more likely than not that the Supplier, at the Time of Sale, sold or marketed membership of the Fractional Club as an investment, i.e. told Mr I or led him to believe during the marketing and/or sales process that membership of the Fractional Club was an investment and/or offered him the prospect of a financial gain (i.e., a profit); and, in turn
(2) whether the Supplier's actions constitute a breach of Regulation 14(3).

And for reasons I'll now come on to, given the facts and circumstances of this complaint, I think the answer to both of these questions is 'yes'.

How the Supplier marketed and sold the Fractional Club membership

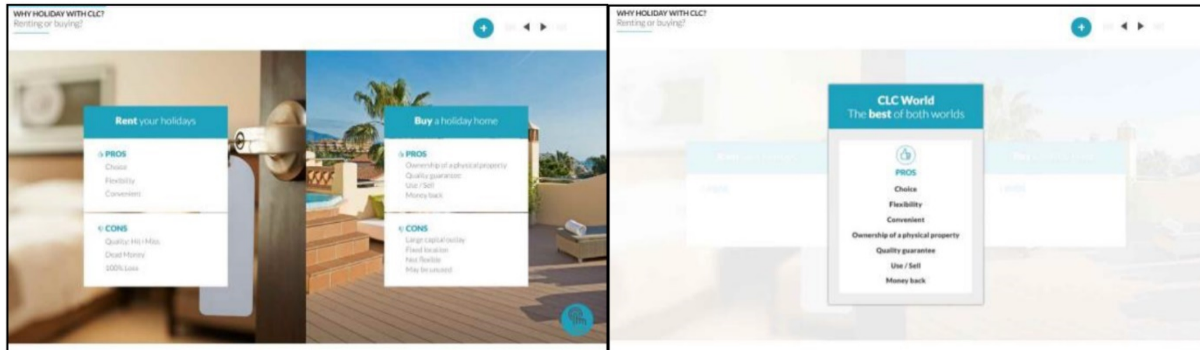
During the course of the Financial Ombudsman Service's work on complaints about the sale of timeshares, the Supplier provided information on how it sold membership of timeshares like Mr I – which includes a document called the "Fractional Property Owners Club Fly Buy Manual 2017" (the '2017 Fractional Training Manual').

As I understand it, a slightly earlier version of the 2017 Fractional Training Manual was actually used from November 2016 during the sale of the Supplier's second version of the Fractional Property Owners Club (which I will continue to refer to as simply the Fractional Club) – which was the version Mr I appear to have purchased. It is not entirely clear whether he would have been shown the slides included in the Manual. But it seems to me to be reasonably indicative of:

(1) the training the Supplier's sales representatives would have got before selling Mr I Fractional Club membership; and

(2) how the sales representatives would have framed the sale of Fractional Club membership to him.

Having looked through the Manual, my attention is drawn first to page 19 (of 74) – which includes two slides called “Why holiday with [the Supplier]? Renting or buying?”.



They were the first slides in the Manual that seems to me to set out any information about Fractional Club membership, albeit without expressly referring to the Fractional Club, because they suggest that sales representatives were likely to have made the point to Miss I and Mr S that holidaying with the Supplier combined the best of (1) and (2), including, amongst other things, ownership of a physical property and money back – which were benefits that were only front and centre of Fractional Club membership.

From the off, therefore, it seems likely that sales representatives would have demonstrated that there were financial advantages to Fractional Club membership rather than being a member of a ‘standard’ timeshare.

Indeed, the slides above presented a very similar prospect to that presented in a slide used in one of the Supplier’s earlier training manuals that was used to help it sell the first version of Fractional Property Owners Club:

All three indicate that sales representatives would have taken prospective members through three holidaying options along with their positives and negatives:

(1) *“Rent Your Holidays”*

(2) *“Buy a Holiday Home”*

(3) *The “Best of Both Worlds”*

I acknowledge that the slides incorporated into the 2017 Fractional Training Manual don't include express reference to the 'investment' benefit of Fractional Club membership. But they allude to much the same concept.

One of those advantages referred to in the slides on page 19 of the 2017 Fractional Training Manual is the *"ownership of a physical 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 any mortgage secured against it, this particular advantage of Fractional Club membership was portrayed in terms that played on the opportunity ownership gave prospective members of the Fractional Club to accumulate wealth in a similar way.

When the Manual moved on to describe how membership of the Fractional Club worked between pages 26 and 36, one of the major benefits of Fractional Club membership was described on page 35 as:

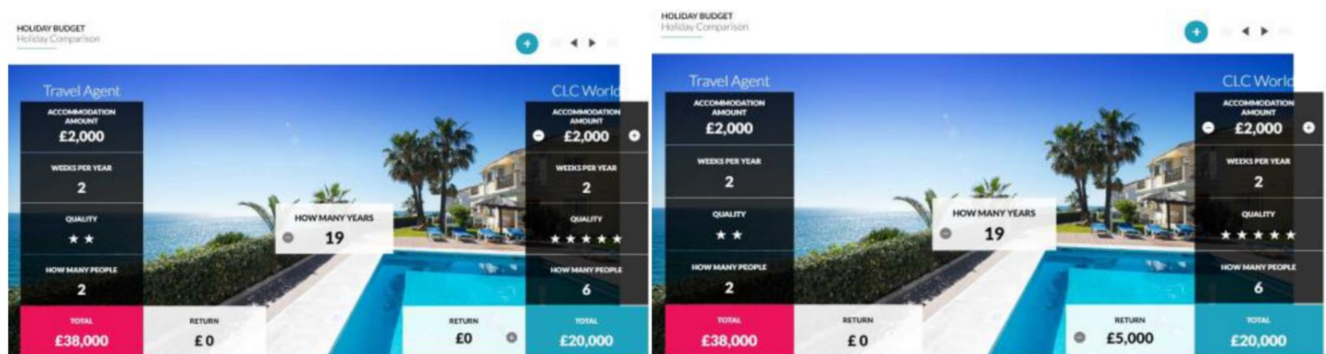
"A major benefit is that after 19 years of fantastic holidays, the property in which you own a fraction is sold and you will receive your share of the sale proceeds according to the number of fractions owned."

And on page 36 there were notes that encouraged sales representatives to summarise this benefit in the following way:

"*So really 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?*".

After discussing some of the other aspects of membership, such as the different resorts available to members, page 53 of the Manual indicates that sales representatives would have moved onto a cost comparison between "renting" holidays and "owning" them. Sales representatives were encouraged to tell prospective members how much they would spend over 19 years (i.e., the length of Fractional Club membership) on holidays with "no return" in contrast to spending the same amount of money as Fractional Club members – thus demonstrating the financial advantages of membership.

Page 53 included the following slides and accompanying notes:



"We aren't only talking about 10 years, we are talking about 10 years, we are talking about 19 years. So in actual fact, with the travel agent over 19 years you would have spend over £… with no return.

However, with [the Supplier] you would still have spent the same £… because once your fraction is paid for, the remaining years of holiday accommodation is taken care of.

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 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 2017 Fractional Training Manual, the language did leave open the possibility that the return could be equal to if not more than the initial outlay. And I have seen another version of the same training material in which it appears the Supplier’s representatives were encouraged to describe a return of £5,000 as being “very, very conservative”, leaving a purchaser with the impression that they could potentially expect much more. Furthermore, the slides above represent Fractional Club membership 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 Mr I) 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 him that the financial return was in fact an overall profit.

What’s more, I think the Supplier’s sales representatives were encouraged to make prospective Fractional Club members (like Mr I) consider the advantages of owning something and view membership as a way of generating a return, rather than simply paying for holidays in the usual way. That was likely to have been reinforced throughout the Supplier’s sales presentations by describing membership as a form of property ownership referring to the prospect of a “return”. And with that being the case, I think the language used during the Supplier’s sales presentations was likely to have been consistent with the idea that Fractional Club membership was an investment. Indeed, this is consistent with how Mr I describes the impressions he received from the sales process – that he would be able to benefit from holidays but would also own something which would grow in value over time.

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 Mr I the financial value of the proprietary interest he 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)).”*[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.

Indeed, if I’m wrong about that, I find it difficult to explain why, in paragraphs 77 and 78 followed by 99 and 100 of S*hawbrook & BPF v FOS* when, Mrs Justice Collins Rice said the following:

[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

“[…] 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.”*

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 Mr I), 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.

So, overall, I think the Supplier’s sales representative was likely to have led Mr I 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 don’t find him either implausible or hard to believe when he says that he was told that he was buying shares in property and that he could almost double his money at the end of the membership term. On the contrary, in the absence of evidence to persuade me otherwise, I think that’s likely to be what Mr I 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.

I think it is worth at this point addressing a few concerns the Lender and the Supplier have raised about Mr I’s testimony. The Supplier has suggested that Mr I’s recollections are flawed, contradictory, and likely to have been coached or otherwise influenced by PR.

I acknowledge here that Mr I’s witness statement appears to date to after important legal developments[3] relating to the sale of fractional timeshares, and there’s a possibility that these developments *could* have influenced his recollections. However, it wouldn’t be reasonable to dismiss his testimony out of hand just because of when it appears to have been written. The Supplier has alleged that the metadata associated with the statement suggests it was amended at some point between May 2024 and July 2024 (when the

[3] The widely-publicised judgment in the case of *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), emphasised that an unfair credit relationship could be caused by the sale of timeshares as an investment.

complaint was made), suggesting that all the references to investment were added at a later date. There could be several reasons why a document's metadata would change, and not all of them would be because changes had been made to the content of the document. So, I don't think this point provides much assistance to the Supplier's case.

The Supplier has also said that the witness statement, or at least parts of it, don't sound like Mr I. It says that he has a distinctive way of writing that is absent in the sections of the statement which talk about the product being an investment. It has supplied a copy of an email which Mr I sent to try to withdraw from the Purchase Agreement in December 2018, as a further example of his writing style.

I've carefully read the witness statement along with the email the Supplier has mentioned, but I don't see obvious inconsistencies in the writing style. It's my understanding that Mr I's first language may not be English and I can see there are some grammatical errors in both the email and the witness statement. The Supplier appears to be observing that the same errors do not occur consistently across the witness statement. This appears to be accurate, but I note that the same errors are not consistently made in the email *either*, so I'm minded to conclude that this is simply how Mr I writes, rather than evidence of his witness statement having been altered by PR at a later date.

Additionally, I think many of the apparently flawed recollections are of little significance. For example, it seems Mr I believed the meeting which had taken place earlier in 2018, and in which he had refused to buy a product from the Supplier, had been in March when according to the Supplier it had been in April. And the Supplier thinks it's more likely that Mr I took breakfast at a self-service buffet at the Time of Sale and that its representatives would not have brought him any food personally, as recalled in his witness statement. I don't think these very minor discrepancies are a reason to have significant concerns over the credibility of the statement.

I would note, finally, that the notes of a conversation Mr I had with the Supplier two months after the Time of Sale, in which he was attempting to withdraw from the purchase, are consistent with some of the things he says in the witness statement. It's possible to see in these notes that Mr I felt he had been given incorrect information by the Supplier about a variety of things at the Time of Sale:

"[Mr I] refuses to understand he can't simply cancel & that [he is] liable for the finance.

"Clarify usage, finance, surrender & no buy-back policy which automatically cancels membership. Mr claims this was suggested at time of purchase…"

While investment is not mentioned – this conversation was about an attempted cancellation of the purchase so I wouldn't necessarily expect it to be. But what *is* mentioned is the allegation that the Supplier's staff told him he could withdraw or cancel at any time, which is consistent with what he said in his witness statement many years later. This consistency I think lends the statement some credibility, as it suggests there has been stability in Mr I's recollections over time.

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 I and the Lender under the Credit Agreement and related Purchase Agreement.

As the Supreme Court's judgment in *Plevin* makes clear, it does not automatically follow that regulatory breaches 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.

It also it seems to me in light of *Carney* and *Kerrigan* that, if I am to conclude that a breach of Regulation 14(3) led to a credit relationship between Mr I 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.

On my reading of Mr I's testimony, the prospect of a financial gain from Fractional Club membership was an important and motivating factor when he decided to go ahead with his purchase. While I think his claim that "*We solely saw this as an investment and potential to grow financially"* is likely to be somewhat exaggerated given he and his fiancée's obvious interest in other product benefits, he refers to the investment aspect of the product on multiple occasions throughout the statement. He was clearly also interested in the holiday related benefits of the product – this is something that comes across in his witness statement and in the notes the Supplier made after the sale, especially on an occasion in 2020 when his fiancée attempted to book a cruise. And I think it would be unusual for a person buying a holiday product to have no interest in using it to take holidays.

But it is possible to have *multiple* material motivations for making a financial decision, and as Mr I says (plausibly in my view) that Fractional Club 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 other types of timeshare or holiday product available on the market. 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 I has not said or suggested, for example, that he would have gone ahead with the purchase in question had the Supplier not led him to believe that Fractional Club 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 Fractional Club, I'm not persuaded that he would have pressed ahead with his purchase regardless.

I'm aware the Supplier thinks Mr I's post-purchase actions in attempting to withdraw from the purchase in December 2018, and a further attempt to withdraw after disappointment in the prices available for cruises in 2020, are inconsistent with a belief that the product was a long-term investment. The Supplier questions why Mr I or his fiancée would not have expressed concerns about loss of their investment in these circumstances. While I can see the logic behind this point, I think it's important to remember that both attempted withdrawals appear to have been an attempt to unwind the purchase completely (including the associated loan). Mr I and his fiancée clearly were under the impression that this is something they were allowed to do (although this understanding was mistaken) – and given this would have not resulted in them "losing" anything, I wouldn't necessarily have expected them to express concern over losing their investment in that context.

Conclusion

Given the facts and circumstances of this complaint, I think the Lender participated in and perpetuated an unfair credit relationship with Mr I 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 I 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 him back in the position he would have been in had he not purchased the Fractional Club membership (i.e., not entered into the Purchase Agreement), and therefore not entered into the Credit Agreement, provided Mr I and the joint purchaser agree to assign to the Lender their 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 Mr I with that being the case – whether or not a court would award such compensation:

(7) The Lender should refund Mr I'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.

(8) In addition to (1), the Lender should also refund the annual management charges Mr I paid as a result of Fractional Club membership.

(9) The Lender can deduct:

iii. The value of any promotional giveaways that Mr I used or took advantage of; and

iv. The market value of the holidays* Mr I took using his Fractional Points.

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

(10) 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.

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

(12) If Mr I's Fractional Club membership is still in place at the time of this decision, as long as he and the joint purchaser agree to hold the benefit of their interest in the Allocated Property for the Lender (or assign it to the Lender if that can be achieved), the Lender must indemnify them against all ongoing liabilities as a result of their Fractional Club membership.

*I recognise that it can be difficult to reasonably and reliably determine the market value of holidays when they were taken a long time ago and might not have been available on the open market. So, if it isn't practical or possible to determine the market value of the holidays Mr I 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 provisional decision

For the reasons explained above, I’m currently minded to uphold this complaint and direct Mitsubishi HC Capital UK PLC to take the actions outlined in the “Fair Compensation” section of this decision.

Will Culley
Ombudsman