

The complaint

Mrs M's complaint is, in essence, that Mitsubishi HC Capital UK PLC trading as Novuna Personal Finance¹ (the 'Lender') acted unfairly and unreasonably by (1) being party to an unfair credit relationship with her under Section 140A of the Consumer Credit Act 1974 (as amended) (the 'CCA') and (2) deciding against paying a claim under Section 75 of the CCA.

The timeshare in question was bought jointly by Mr and Mrs M, but as the loan used to finance the purchase was in Mrs M's sole name, she is the only eligible complainant here. I will, however, refer to both Mr and Mrs M where it is appropriate to do so.

What happened

Mr and Mrs M were existing members of a timeshare provider (the 'Supplier') having purchased a total of 3,011 points in a Vacation Club ('VC') membership. As VC members, every year they could use their points in exchange for holidays at the Supplier's holiday resorts. Different accommodation had different points values, depending on factors such as location, size, and time of year. So, for example, a larger apartment in peak season would cost more to a member in their points than a smaller apartment outside of school holiday periods.

Then, on 20 May 2012 (the 'Time of Sale') Mr and Mrs M purchased membership of a different type of timeshare (the 'Fractional Club') from the Supplier. They entered into an agreement with the Supplier to buy 2,898 fractional points, and after being given a trade in value for their VC points, they ended up paying £7,130 (the 'Purchase Agreement') for their Fractional Club membership.

Unlike the VC, Fractional Club membership was asset backed – which meant it gave Mr and Mrs M more than just holiday rights. It also included a share in the net sale proceeds of a property named on their Purchase Agreement (the 'Allocated Property') after their membership term ends. And the membership term was significantly shorter – ending in 2031 as opposed to 2045 for the VC.

Mrs M paid for their Fractional Club membership by taking finance of £7,130 from the Lender in her sole name (the 'Credit Agreement').

Mrs M – using a professional representative (the 'PR1') – wrote to the Lender on 9 October 2017 (the 'Letter of Complaint') to raise a number of different concerns about their Fractional Club purchase and the associated Credit Agreement. 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 did not send a substantive response to the complaint within the eight weeks required by the regulator, so the PR1 referred Mrs M's complaint to the Financial Ombudsman Service.

¹ At the time of the sale the Lender was trading as Hitachi Capital Consumer Finance.

The Lender, having dealt with Mrs M's concerns as a complaint, issued its final response letter on 16 January 2018, rejecting it on every ground.

Unhappy with this outcome, Mrs M asked for the merits of her complaint to be assessed by an Investigator at this Service. But having considered the information on file, the Investigator didn't think her complaint ought to be upheld.

Mrs M disagreed with the Investigator's assessment and asked for an Ombudsman's decision. While her complaint was waiting for allocation to an Ombudsman, Mrs M engaged a different professional representative (the 'PR2').

Mrs M's complaint was then assessed by a second Investigator at this Service, who also concluded that her complaint should not be upheld. As no informal agreement could be reached the matter came to me for consideration and a decision.

The provisional decision

Having considered everything that had been submitted, I thought that Mrs M's complaint ought to be upheld. I set out my initial thoughts in a provisional decision (the 'PD') and invited both sides to submit any new evidence or arguments that they wished me to consider before I finalised my decision. In the PD I said:

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

And having done that, I currently think that this complaint should be upheld because the Supplier breached Regulation 14(3) of the Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010 (the 'Timeshare Regulations') by marketing and/or selling Fractional Club membership to Mr and Mrs M as an investment, which, in the circumstances of this complaint, rendered the credit relationship between Mrs M and the Lender unfair to her for the purposes of Section 140A of the CCA.

However, before I explain why, I want to make it clear that my role as an Ombudsman is not to address every single point that has been made to date. Instead, it is to decide what is fair and reasonable in the circumstances of this complaint. So, while I recognise that there are a number of aspects to this complaint, it is not necessary to make formal findings on all of them because, even if one or more of those aspects ought to succeed, the redress I am currently proposing puts Mrs M in the same or a better position than she would otherwise be in.

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

Having considered the entirety of the credit relationship between Mrs M and the Lender along with all of the circumstances of the complaint, I think the credit relationship between them was likely to have been rendered unfair for the purposes of Section 140A. When coming to that conclusion, and in carrying out my analysis, I have looked at:

- 1. The Supplier's sales and marketing practices at the Time of Sale – which includes training material that I think is likely to be relevant to the sale;*
- 2. The provision of information by the Supplier at the Time of Sale, including the contractual documentation and disclaimers made by the Supplier;*
- 3. Evidence provided by both parties on what was likely to have been said and/or done at the Time of Sale; and*
- 4. The inherent probabilities of the sale given its circumstances.*

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

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

The Lender does not dispute, and I am satisfied, that Mr and Mrs M'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 Mrs M says that the Supplier did exactly that at the Time of Sale – saying, in summary, that they were told by the Supplier that Fractional Club membership was the type of investment that would increase in value.

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

Mr and Mrs M's share in the Allocated Property clearly constituted an investment as it offered them the prospect of a financial return – whether or not, like all investments, that was more than what they 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 and Mrs M 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 them as an investment, i.e. told them or led them to believe that Fractional Club membership offered them 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 and Mrs M, the financial value of their share in the net sales proceeds of the Allocated Property along with the investment considerations, risks and rewards attached to them. There were, for instance, disclaimers in the contemporaneous paperwork that state that Fractional Club membership was not sold to Mr and Mrs M as an investment.

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

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

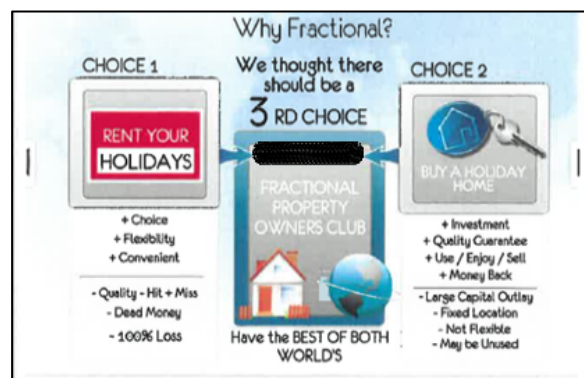
How the Supplier marketed and sold the Fractional Club membership

During the course of the Financial Ombudsman Service's work on complaints about the sale of timeshares, the Supplier has provided training material used to prepare its sales representatives – including a document called "2011 Spain PTM FPOC 1 Practice Slides Manual" (the '2011 Fractional Training Manual').

As I understand it, the 2011 Fractional Training Manual was used throughout the sale of the Supplier's first version of a product called the Fractional Property Owners Club – which I've referred to and will continue to refer to as the Fractional Club. It isn't entirely clear whether Mr and Mrs M 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 and Mrs M Fractional Club membership; and
- (2) how the sales representatives would have framed the sale of Fractional Club membership to Mr and Mrs M.

Having looked through the manual, my attention is drawn to page 6 (of 41) – which includes the following slide on it:

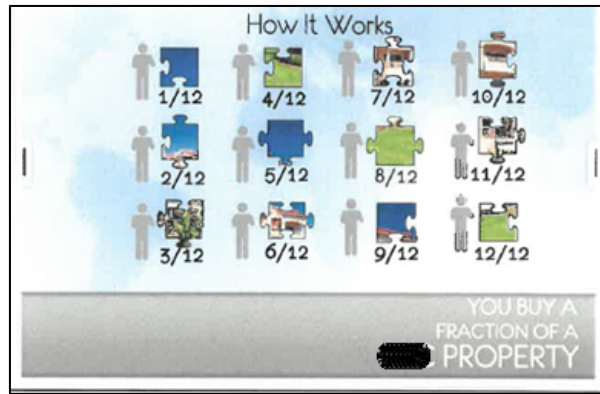


This slide titled "Why Fractional?" indicates that sales representatives would have taken Mr and Mrs M through three holidaying options along with their positives and negatives:

- (1) "Rent Your Holidays"
- (2) "Buy a Holiday Home"
- (3) The "Best of Both Worlds"

It was the first slide in the 2011 Fractional Training Manual to set out any information about Fractional Club membership and I think it suggests that sales representatives were likely to have made the point to Mr and Mrs M that membership combined the best of (1) and (2) – which included choice, flexibility, convenience and, significantly, **an investment** they could use, enjoy and sell before getting money back.

The manual then moved on to two slides (on pages 7 and 8) concerned with how Fractional Club membership worked:



I'm aware that the Supplier says that 90-95% of its time during its sales presentations was focused on holidays rather than the sale of an allocated property. Having looked through the 2011 Fractional Training Manual, it seems to me that there were 10 slides on how Fractional Club membership worked before the slides moved onto sections titled "Peace of Mind", "Resort Management" and "Which Fractional". And as 5 of the 10 slides look like they focused on holidays, there seems to me to have been a fairly even split during the Supplier's sales presentations between marketing membership of the Fractional Club as a way of buying an interest in property and as a way of taking holidays.

However, even if more time was spent on marketing membership of the Fractional Club as a way of taking holidays rather than buying an interest in property, as the slides above suggest, in my view, that the Supplier's sales representatives would have probably led prospective members to believe that a share in an allocated property was an investment (after all, that's what the slide titled "Why Fractional" expressly described it as), I can't see why the Supplier wouldn't have been in breach of Regulation 14(3) in those circumstances.

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. And indeed, Mrs M has not said that the Supplier made any specific reference to how much the Allocated Property was likely to make upon its sale. However, if I were to only concern myself with express efforts to quantify to Mr and Mrs M the financial value of the proprietary interest they were 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.

Mr and Mrs M say, in their own words, that the Supplier positioned membership of the Fractional Club as an investment to them. And as I've said before, the slides I've referred to above seem to me to reflect the training the Supplier's sales representatives would have got before selling Fractional Club membership and, in turn, how they would have probably framed the sale of the Fractional Club to prospective members – including Mr and Mrs M. And as the slides clearly indicate that the Supplier's sales representative was likely to have led them to believe that membership of the Fractional Club was an investment that may lead to a financial gain (i.e., a profit) in the future, I don't find them either implausible or hard to believe when they say they were told changing their VC points to fractional was "the way forward and the best way of ensuring we would get our money back in the future". On the contrary, in the absence of evidence to persuade me otherwise, I think that's likely to be what Mr and Mrs M were led by the Supplier to believe at the relevant time. And for that reason, I think the Supplier breached Regulation 14(3) of the Timeshare Regulations.

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

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

Indeed, it seems to me that if I am to conclude that a breach of Regulation 14(3) led to a credit relationship between Mrs M and the Lender that was unfair to her and warranted relief as a result, whether the Supplier's breach of Regulation 14(3) led Mr and Mrs M to enter into the Purchase Agreement and Mrs M into the Credit Agreement is an important consideration.

And on my reading of Mr and Mrs M's own words as set out in a questionnaire sent to them by PR1, the prospect of a financial gain from Fractional Club membership was an important and motivating factor when they decided to go ahead with their purchase.

A statement in Mr and Mrs M's name was submitted by the PR1. Having read it, it is very generic in nature and contains little information specific to their purchase at the Time of Sale. It was also clearly drafted by the PR as the language used is legalistic, and I do not find it particularly useful.

The questionnaire to which I refer was completed and signed by both Mr and Mrs M on 8 August 2017. Much of the questionnaire is based on tick box yes/no answers, which are clearly leading and could be suggestive of possible complaints that they could make. So, I

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>

do not find much of the contents of the questionnaire useful as I do not feel able to place much, if any weight on these types of answers.

However, towards the end of the questionnaire is a section that Mr and Mrs M were able to complete freehand, and it is what they have written in these sections that I find persuasive when trying to understand their motivation for making the Fractional Club purchase at the Time of Sale.

Q: "What did they tell you?"

A: "Fractional points was the way forward and was the best way of ensuring we would get our money back in the future."

Q: "Why was the statement false?"

A: "Have found out, it is not necessarily the case that we will be able to sell it."

Q: "Why was it of material significance to you?"

A: "We have paid more money for something that in our minds we will unlikely get back."

These answers suggest to me that it was the ability to get the money that they had paid for their timeshare memberships back that was the motivation behind their purchase. And this accords with what they did at the Time of Sale. After all, they had been members of a points-based timeshare (the VC) for a few years, and this membership had no return other than the holidays it could provide. And there is nothing to suggest they were unhappy with this membership, so it begs the question – why would they change to the Fractional Club? They didn't get any additional holiday rights with the purchase at the Time of Sale, but paid over £7,000 to do so, so it seems likely that the additional cost incurred was directly attributed to the fractional interest in the Allocated Property. And as I've said, from what I know about how the Supplier sold this particular fractional membership, it was likely to have been positioned to Mr and Mrs M as an investment, with at least the implication that they could make a profit from it.

That doesn't mean they were not interested in holidays – their membership usage demonstrates that they quite clearly were. And that is not surprising given the nature of the product at the centre of this complaint. But as Mr and Mrs M say (plausibly in my view) that Fractional Club membership was marketed and sold to them at the Time of Sale as something that offered them more than just holiday rights, on the balance of probabilities, I think their purchase was motivated by their 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 their existing membership.

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

And with that being the case, I think the Supplier's breach of Regulation 14(3) was material to the decision they ultimately made.

Conclusion

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

I then set out what I considered to be a fair and reasonable way for the Lender to calculate and pay fair compensation to Mrs M.

The responses to the provisional decision

Mrs M accepted the provisional outcome with no further comment. The Lender also responded but did not accept it. It said, in summary:

- The available evidence does not reliably support the finding that Mrs M’s decision to purchase the Fractional Club membership was influenced by an alleged breach of Regulation 14(3) of the Timeshare Regulations.
- In any event, it did not think the evidence supports the conclusion that the Fractional Club membership was marketed as an investment.

It said this because it thought the PD’s interpretation of Mrs M’s answer to the following question was wrong:

Q: *“What did they tell you?”*

A: *“Fractional points was the way forward and was the best way of ensuring we would get our money back in the future.”*

The Lender said that Mrs M’s response *only* relays a belief that the membership provided a way to recover the money she paid for the Fractional Club membership – not that it would provide her with a profit. It said that the PD’s position that there was an inference that she was referring to the recovery of all monies previously paid for all her earlier timeshare products is not supported. If that was her understanding, the Lender thought it would have been reasonable for her to explain that explicitly.

It went on to say that what Mrs M has said in a second statement, was written after the Investigator’s view that her complaint ought not to be upheld, and after the judgement in *Shawbrook & BPF v FOS* so cannot be seen as independent or contemporaneous evidence of Mrs M’s original understanding or motivations at the Time of Sale. It said the PD’s conclusions that an unfair relationship existed, was based on my interpretation of what I believed may have happened during the sales presentation, rather than relying on what Mrs M says, which does not align with the PD.

It concluded by saying that *“getting money back”* is not the same as profiting or gaining financially. Without clear evidence of an expectation of a financial gain, the Lender said it cannot be properly concluded that any alleged breach of Regulation 14(3) influenced Mrs M’s decision to make the purchase or that the credit relationship was thereby rendered unfair.

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 rules³ 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

³ Financial Conduct Authority (“FCA”) Handbook – DISP 3.6.4R (“R” denotes a rule).

(where 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.

After considering the case afresh and having regard for what's been said in response to my provisional decision, I see no persuasive reason to depart from the conclusions I've previously set out. I still think this complaint ought to be upheld. I'll explain why.

Did the Supplier breach Regulation 14(3) of the Timeshare Regulations at the Time of Sale?

As I set out in the PD, what I know about how the Supplier presented this particular version of its Fractional Club does suggest that it was sold and/or marketed as an Investment. After all, it was explicitly described as such in one of the slides:



As I said in the PD, this slide titled "Why Fractional?" indicates that sales representatives would have taken Mr and Mrs M 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"

And the Supplier described the membership as a combination of the best of (1) and (2) – which included choice, flexibility, convenience and, significantly, **an investment** they could use, enjoy and sell before getting money back.

And as the presentation clearly indicates that the Supplier's sales representative was likely to have led Mr and Mrs M to believe that membership of the Fractional Club was an investment that may lead to a financial gain (i.e., a profit) in the future, and having considered what the Lender has said on this point, I still don't find Mrs M either implausible or hard to believe when she says the Supplier described it as such in their presentation. And that they were told changing their VC points to fractional was "*the way forward and the best way of ensuring we would get our money back in the future*". On the contrary, in the absence of evidence to persuade me otherwise, I still think that's likely to be what Mr and Mrs M were led by the Supplier to believe at the relevant time. And for that reason, on the balance of probabilities, I think the Supplier breached Regulation 14(3) of the Timeshare Regulations.

Did the Supplier's breach of Regulation 14(3) render Mrs M's credit relationship unfair?

Having reconsidered all of the available evidence, and the arguments the Lender has made following the PD, I remain of the opinion that the Supplier's breach of Regulation 14(3) was likely to have been material to the decision Mr and Mrs M made to purchase the Fractional Club at the Time of Sale.

The Lender has said it is unsafe to place any weight on a statement submitted by Mrs M following the second Investigator's view – it says this because it thinks it may have been influenced by what the Investigator said and by the judgement in *Shawbrook & BPF v FOS*. But for the avoidance of doubt, I have not relied on what she has said in this statement when coming to my conclusions about the influence the Supplier's breach of Regulation 14(3) had on Mr and Mrs M's decision to purchase at the Time of Sale. For that I have relied upon her handwritten answers in the questionnaire.

And in response to the PD, the Lender has disagreed with my interpretation of what Mrs M has said in these handwritten answers. It said that her answers only suggested she expected to get back what she paid for the Fractional Club membership, not a profit.

But the Lender appears to be conflating two separate arguments here – whether there was a breach of Regulation 14(3) and whether that breach was material to their purchasing decision. As I've said, I am already satisfied that there was likely to have been a breach of Regulation 14(3) at the Time of Sale.

But having considered everything, for the reasons I set out in the PD, I remain satisfied that the breach was material to their purchasing decision.

After all, when describing the material significance of the way the Supplier presented the Fractional Club membership she said:

"We have paid more money for something that in our minds we will unlikely get back."

And it is of significance that they had been members of a points-based timeshare (the VC) for a few years, and this membership had no return other than the holidays it could provide, and there is nothing to suggest they were unhappy with this membership. In changing their VC points into fractional points, they didn't get any additional holiday rights, and paid over £7,000 to do so. So, it is reasonable to ask – why would they change to the Fractional Club? Given the Fractional Club membership was likely to have been positioned to Mr and Mrs M as an investment, with at least the implication that they could make a profit from it, and because it has not been suggested at any point that a shorter membership term was important to them, it seems to me to be a reasonable assumption that Mrs M was referring to receiving back what they had paid out for all of their membership points – not just what they actually paid for the Fractional Club. After all, their existing points were traded in at the Time of Sale, so Mr and Mrs M would have seen them as having value and being part and parcel of what they paid for the Fractional Club.

So, I am persuaded, on the balance of probabilities, that their purchase of the Fractional Club was motivated by their share in the Allocated Property and the possibility of a profit. And because of this, I think Mrs M's credit relationship with the Lender was rendered unfair to her under Section 140A of the CCA, so this complaint ought to be upheld on that basis.

Putting things right

In the PD I set out how I thought the Lender should calculate and pay fair compensation to

Mrs M. Neither side made any comment about my proposed redress methodology, so I see no reason to depart from what I set out in the PD. For clarity I shall repeat it here.

Fair Compensation

Having found that Mr and Mrs M 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 Mrs M was unfair under Section 140A of the CCA, I think it would be fair and reasonable to put Mrs M back in the position she would have been in had she not purchased the Fractional Club membership (i.e., not entered into the Purchase Agreement), and therefore not entered into the Credit Agreement. This is on the proviso that Mr and Mrs M both agree to assign to the Lender their fractional points or hold them on trust for the Lender if that can be achieved.

Mr and Mrs M were existing Vacation Club members, and their membership was traded in against the purchase price of Fractional Club membership. Under their Vacation Club membership, they were, like with the Fractional Club membership, required to pay annual management charges. So, had Mr and Mrs M not purchased Fractional Club membership, they would have always been responsible for paying an annual management charge of some sort. With that being the case, any refund of the annual management charges paid by Mr and Mrs M from the Time of Sale as part of their Fractional Club membership should amount only to the difference between those charges and the annual management charges they would have paid as ongoing Vacation Club members.

So, here's what I am directing the Lender to do to compensate Mrs M with that being the case – whether or not a court would award such compensation:

- (1) The Lender should refund Mrs M's repayments to it under the Credit Agreement, including any sums paid to settle the debt, and cancel any outstanding balance if there is one.
- (2) In addition to (1), the Lender should also refund the difference between Mr and Mrs M's Fractional Club annual management charges paid after the Time of Sale and what their Vacation Club annual management charges would have been had they not purchased Fractional Club membership.
- (3) The Lender can deduct:
 - i. The value of any promotional giveaways that Mr and/or Mrs M used or took advantage of; and
 - ii. The market value of the holidays* taken using their fractional points *if* the points value of the holiday(s) taken amounted to more than the total number of Vacation Club points they would have been entitled to use at the time of the holiday(s) as ongoing Vacation Club members. However, this deduction should be proportionate and relate only to the additional fractional points that were required to take the holiday(s) in question.

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

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

- (4) Simple interest** at 8% per annum should be added to each of the Net Repayments from the date each one was made until the date the Lender settles this complaint.
- (5) The Lender should remove any adverse information recorded on Mrs M's credit files in connection with the Credit Agreement reported within six years of this decision.
- (6) If Mr and Mrs M's Fractional Club membership is still in place at the time of this decision, as long as they 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 taken using Mr and Mrs M's 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 their usage.

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

My final decision

I uphold this complaint, and direct Mitsubishi HC Capital UK PLC trading as Novuna Personal Finance to calculate and pay fair compensation to Mrs M as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 21 May 2026.

Chris Riggs
Ombudsman