DRN-4892875

The complaint

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

What happened

Mrs P purchased membership of a timeshare (the 'Fractional Club') from a timeshare provider (the 'Supplier') on 2 January 2013 (the 'Time of Sale'). She entered into an agreement with the Supplier to buy 3,105 fractional points at a cost of £50,599 (the 'Purchase Agreement'). But after trading in her existing timeshare, she ended up paying £12,840 for membership of the Fractional Club.

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

Mrs P paid for her Fractional Club membership by taking finance of £12,840 from the Lender (the 'Credit Agreement'). The loan was repaid in October 2013.

Mrs P – using a professional representative ('PR') – wrote to the Lender on 13 June 2017 (the 'Letter of Complaint') to complain about her Fractional Club membership. The Letter of Complaint read (in full):

> "*Our clients bought into [the Supplier] in 2013 to save money on foreign holidays and also because they were told that buying into Fractional Points was a definite investment as the Resort would be sold within 19 years and they would make a substantial profit on their investment. They returned in November 2015 when they were subjected to a very long presentation to get them to invest further*
> *They paid for this transaction by using a company recommended to them by [the Supplier].*
>
> *They were also told that the maintenance fees would not increase (a blatant lie) and that they were joining an exclusive members only club which would always maintain the very highest standards. In fact, the maintenance fees have increased yearly. It is also far from exclusive as the holidays at [the Supplier's resorts] are advertised and freely available to anyone [online] and at a much cheaper rate than the maintenance fees our clients are paying. Also, we would draw your attention to Clause 4 of the Member Declaration (highlighted) which clearly states they have no intention of selling the resort*
>
> *Our clients wish to make a claim under Section 75 of the Consumer Credit Act of 1974.*
> *We await your comments with interest.*"

The Lender dealt with Mrs P's concerns as a complaint and issued its final response letter

on 30 August 2018, rejecting it on every ground.

Mrs P then referred the complaint to the Financial Ombudsman Service. It was assessed by an Investigator who, in December 2020, having considered the information on file, rejected the complaint on its merits.

Mrs P disagreed with the Investigator's assessment and asked for an Ombudsman's decision, but they did not explain why they disagreed with what had been said.

In November 2023, a different investigator reconsidered Mrs P's complaint. They again thought about the effect of the CCA on their complaint, and again rejected the complaint on its merits. Before she did so, she asked PR if it had a witness statement or similar evidence of her memories of the sale, but PR did not provide anything.

Mrs P disagreed with the investigator's assessment and so the complaint has been passed to me for a decision. In doing so, PR asked for an ombudsman to review the complaint, taking into account the judgment in *R (on the application of Novuna 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) ('*Novuna & BPF v FOS*'). It was argued that the Fractional Club membership did not offer any additional benefits over the rights Mrs P already had under her earlier membership, but with a shorter duration. Given that, it was alleged that the Fractional Club amounted to a collective investment scheme ('CIS') and the sale of such a CIS rendered the associated debtor-creditor relationship unfair as defined by section 140A.

The legal and regulatory context

In considering what is fair and reasonable in all the circumstances of the complaint, I am required under DISP 3.6.4 R to take into account: relevant (i) law and regulations; (ii) regulators' rules, guidance and standards; and (iii) codes of practice; and (when appropriate), what I consider to have been good industry practice at the relevant time.

I will refer to and set out several regulatory requirements, legal concepts and guidance in this decision, but I am satisfied that of particular relevance to this complaint is:

- The CCA (including Section 75 and Sections 140A-140C)
- The law on misrepresentation
- The Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010 (the 'Timeshare Regulations').
- Unfair Terms in Consumer Contracts Regulations 1999
- Consumer Protection from Unfair Trading Regulations 2008 (the 'CPUTR')
- Case law on Section 140A of the CCA – including, in particular:

    - The Supreme Court's judgment in *Plevin v Paragon Personal Finance Ltd* [2014] UKSC 61 ('*Plevin*') (which remains the leading case in this area).
    - *Patel v Patel* [2009] EWHC 3264 (QB) ('*Patel*').
    - The Supreme Court's judgment in *Smith v Royal Bank of Scotland Plc* [2023] UKSC 34 ('*Smith*').
    - *Carney v NM Rothschild & Sons Ltd* [2018] EWHC 958 ('*Carney*').
    - *Kerrigan v Elevate Credit International Ltd* [2020] EWHC 2169 (Comm) ('*Kerrigan*').
    - *Novuna & BPF v FOS*.

Good industry practice – the RDO Code

The Timeshare Regulations provided a regulatory framework. But they represented a minimum standard. And as the parties to this complaint already know, I am also required to take into account, when appropriate, what I consider to have been good industry practice at the relevant time – which, in this complaint, includes the Resort Development Organisation's Code of Conduct dated 1 January 2010 (the 'RDO Code').

What I have 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 do not think this complaint should be upheld.

But 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, if I have not commented on, or referred to, something that either party has said, that does not mean I have not considered it.

What is more, I have made my decision on the balance of probabilities – which means I have based it on what I think is more likely than not to have happened given the available evidence and the wider circumstances.

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

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

In short, a claim against the Lender under Section 75 essentially mirrors the claim Mrs P could make against the Supplier.

Certain conditions must be met if the protection afforded to consumers is engaged, including, for instance, the cash price of the purchase and the nature of the arrangements between the parties involved in the transaction. But one of the conditions is that the cash price of the goods paid for using credit had to be under £30,000. Here, although the amount borrowed was under that amount, Mrs P's Fractional Club membership cost £50,599. That meant the cash price was over £30,000 and Mrs P does not have a valid Section 75 claim. However, the things said or done by the Supplier are things I can consider when assessing a complaint made that there was an unfair debtor-creditor relationship, so I will consider the allegations in that light.

Overall, therefore, I do not think the Lender acted unfairly or unreasonably when it dealt with the Section 75 claim in question.

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

PR has asked our service to consider whether the credit relationship between Mrs P and the Lender was unfair under Section 140A of the CCA, when looking at all the circumstances of the case, including parts of the Supplier's sales process at the Time of Sale that they have concerns about. That was also something our investigator considered and the Lender has not said it should not have been looked at in that way. So I have considered this further.

As Section 140A of the CCA is relevant law in the context of this complaint, I do have to consider it. So, in arriving at a fair and reasonable outcome to this complaint, it will be helpful to consider whether an unfair credit relationship is likely to have come into existence between Mrs P and the Lender.

Under Section 140A of the CCA, a debtor-creditor relationship can be found to have been or be unfair to the debtor because of one or more of the following: the terms of the credit agreement itself; how the creditor exercised or enforced its rights under the agreement; and any other thing done (or not done) by, or on behalf of, the creditor (either before or after the making of the agreement or any related agreement) (s.140A(1) CCA). Such a finding may also be based on the terms of any related agreement (which here, includes the Purchase Agreement) and, when combined with Section 56 of the CCA, on anything done or not done by the supplier on the creditor's behalf before the making of the credit agreement or any related agreement.

Section 56 plays an important role in the CCA because it defines the terms "antecedent negotiations" and "negotiator". As a result, it provides a foundation for a number of provisions that follow it. But it also creates a statutory agency in particular circumstances. And while Section 56(1) sets out three of them, the most relevant to this complaint are negotiations conducted by the supplier in relation to a transaction financed or proposed to be financed by a debtor-creditor-supplier agreement.

A debtor-creditor-supplier agreement is defined by Section 12(b) of the CCA as *"a restricted-use credit agreement which falls within section 11(1)(b) and is made by the creditor under pre-existing arrangements, or in contemplation of future arrangements, between himself and the supplier […]"*. And Section 11(1)(b) of the CCA says that a restricted-use credit agreement is a regulated credit agreement used to *"finance a transaction between the debtor and a person (the 'supplier') other than the creditor […] and "restricted-use credit" shall be construed accordingly."*

The Lender does not dispute that there was a pre-existing arrangement between it and the Supplier. So, the negotiations conducted by the Supplier during the sale of Mrs P's membership of the Fractional Club were conducted in relation to a transaction financed or proposed to be financed by a debtor-creditor-supplier agreement as defined by Section 12(b). That made them antecedent negotiations under Section 56(1)(c) – which, in turn, meant that they were conducted by the Supplier as an agent for the Lender as per Section 56(2). And such antecedent negotiations were "any other thing done (or not done) by, or on behalf of, the creditor" under s.140(1)(c) CCA.

Antecedent negotiations under Section 56 cover both the acts and omissions of the Supplier, as Lord Sumption made clear in *Plevin*, at paragraph 31:

> *"[Section] 56 provides that [when] antecedent negotiations for a debtor-creditor-supplier agreement are conducted by a credit-broker or the supplier, the negotiations are "deemed to be conducted by the negotiator in the capacity of agent of the creditor as well as in his actual capacity". The result is that the debtor's statutory rights of withdrawal from prospective agreements, cancellation and rescission may arise on account of the conduct of the negotiator whether or not he was the creditor's agent.'* […] *Sections 56 and 140A(3) provide for a deemed agency, even in a case where there is no actual one. […] These provisions are there because without them the creditor's responsibility would be engaged only by its own acts or omissions or those of its agents."*

And this was recognised by Mrs Justice Collins Rice in *Novuna & BPF v FOS* at paragraph 135:

> "*By virtue of the deemed agency provision of s.56, therefore, acts or omissions 'by or on behalf of' the bank within s.140A(1)(c) may include acts or omissions of the timeshare company in 'antecedent negotiations' with the consumer*".

In the case of *Scotland & Reast v British Credit Trust Limited* [2014], the Court of Appeal said, at paragraph 56, that the effect of Section 56(2) of the CCA meant that "*negotiations are deemed to have been conducted by the negotiator as agent for the creditor, and that is so irrespective of what the position would have been at common law"* before going on to say the following in paragraph 74:

> *"[...] there is nothing in the wording of s.56(2) to suggest any legislative intent to limit its application so as to exclude s.140A. Moreover, the words in s.140A(1)(c) "any other thing done (or not done) by, or on behalf of, the creditor" are entirely apposite to include antecedent negotiations falling within the scope of s.56(1)(c) and which are deemed by s.56(2) to have been conducted by the supplier as agent of the creditor. Indeed the purpose of s.56(2) is to render the creditor responsible for such statements made by the negotiator and so it seems to me wholly consistent with the scheme of the Act that, where appropriate, they should be taken into account in assessing whether the relationship between the creditor and the debtor is unfair."*[1]

So, the Supplier is deemed to be Lender's statutory agent for the purpose of the pre-contractual negotiations.

What's more, the scope of that responsibility extends to both acts and omissions by the Supplier as the Supreme Court in *Plevin* made clear when it referred to 'acts or omissions' when discussing Section 56. And as Section 56(3)(b) says that an applicable agreement can't try to relieve a person from liability for 'acts or omissions' of any person acting as, or on behalf of, a negotiator, it must follow that the reference to 'omissions' would only be necessary because they can be attributed to the creditor under Section 56.

However, an assessment of unfairness under Section 140A is not limited to what happened immediately before or at the time a credit agreement and related agreement were entered into. The High Court held in *Patel v Patel* [2009] EWHC 3264 (QB) (which was recently approved by the Supreme Court in the case of *Smith),* that determining whether or not the relationship complained of was unfair had to be made *"having regard to the entirety of the relationship and all potentially relevant matters up to the time of making the determination"* – which was the date of the trial in the case of an existing credit relationship or otherwise the date the credit relationship ended.

The breadth of the unfair relationship test under Section 140A, therefore, is stark. But it is not a right afforded to a debtor simply because of a breach of a legal or equitable duty. As the Supreme Court said in *Plevin* (at paragraph 17):

> *"Section 140A […] does not impose any obligation and is not concerned with the question whether the creditor or anyone else is in breach of a duty. It is concerned with […] whether the creditor's relationship with the debtor was unfair."*

Instead, it was said by the Supreme Court in *Plevin* that the protection afforded to debtors by Section 140A is the consequence of all of the relevant facts.

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[1] The Court of Appeal's decision in *Scotland* was recently followed in *Smith*.

I have considered the entirety of the credit relationship between Mrs P and the Lender along with all of the circumstances of the complaint and I do not think the credit relationship between them was likely to have been rendered unfair for the purposes of Section 140A. I will explain why. When coming to that conclusion, and in carrying out my analysis, I have looked at all the evidence provided to me from both parties, including the Supplier's sales process – which includes:

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.

I have then considered the impact of (1) and/or (2) on the fairness of the credit relationship between Mrs P and the Lender.

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

Mrs P's complaint about the Lender being party to an unfair credit relationship was also made for several reasons, all of which I set out at the start of this decision.

They include the allegation that the Supplier misled Mrs P at the Time of Sale for the same reasons she gave for her Section 75 claim for misrepresentation. But given the limited evidence in this complaint, I am not persuaded that anything done or not done by the Supplier led to an unfair debtor-creditor relationship.

Mrs P says that she was told she would be joining an exclusive member's club, but in fact non-members were able to pay to stay at the Supplier's resorts. But Mrs P has not set out in any level of detail what it was that she was told about the Fractional Club being 'exclusive', why what she was told turned out to be untrue or why that caused an unfair debtor-creditor relationship – I note that no further evidence was provided by PR after our investigator asked if Mrs P had anything further to provide. I have also seen that Mrs P had held membership with the Supplier from 2005, so at the Time of Sale she had used its services for eight years. Further, she went on to upgrade her membership in 2015. That leads to three possible scenarios. First, she knew the Supplier's resorts were not 'exclusive' in the eight years prior to her taking out Fractional Club membership in 2013, but took it out anyway – in that scenario I cannot see how a representation about Fractional Club membership being 'exclusive' could have caused an unfairness if she already knew it to be untrue. Secondly, Mrs P found out Fractional Club membership was not 'exclusive' between 2013 and 2015 – but again, I cannot see how this was important to Mrs P if she chose to go on to upgrade her membership in 2015. Finally, Mrs P found out about 'exclusivity' after she upgraded her membership in 2015. But if that was the case, any unfairness caused have been in relation to the later, upgraded membership, so again I cannot see how that caused an unfairness in relation to the membership that is being considered in this decision. Given all of this, I am not able to make any finding that either Mrs P was misled about Fractional Club membership, nor that an unfair debtor-creditor relationship was caused by what the Supplier said on this issue.

PR has said that the Supplier had no intention of ever selling the Allocated Property and pointed to Clause 4 of the Member's Declaration. That clause read:

> *"We understand that [the Supplier], the Trustee or the Manager does not and will not run any resale or rental programmes and will not repurchase Fractions (or Vacation Club Points) or act as an agent in the sale other than as a trade in against future property purchases (see Paragraph 11 below)"*

However, that clause does not mean the Supplier will not sell the Allocated Property at the end of the membership period, rather it says that the Supplier does not buy back memberships from its members, nor does it run a membership resale programme on their behalf. In fact, the scheme rules set out in detail how the sale of the Allocated Property was to be handled. So I disagree with what PR has said on this issue.

I am not persuaded, therefore, that Mrs P credit relationship with the Lender was rendered unfair to her under Section 140A for any of the reasons above. But there is another reason, perhaps the main reason, why she says her credit relationship with the Lender was unfair to her. And that's the suggestion that Fractional Club membership was marketed and sold to her as an investment in breach of prohibition against selling timeshares in that way.

Was Fractional Club membership marketed and sold at the Time of Sale as an investment in breach of regulation 14(3) of the Timeshare Regulations?

PR has argued that the Fractional Club was a CIS and that led to an unfair debtor-creditor relationship. However, Mrs P acquired holiday rights when joining the Fractional Club, so it met the definition of a "timeshare contract" and was a "regulated contract" for the purposes of the Timeshare Regulations. And it also meant it did not meet the definition of a CIS, so PR is mistaken in its argument on this point (see paragraphs 39-54 in *Novuna & BPF v FOS).*

However, Regulation 14(3) of the Timeshare Regulations prohibited the Supplier from marketing or selling membership of the Fractional Club 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 PR says that the Supplier did exactly that at the Time of Sale. So, that is what I have considered next.

The term "investment" is not defined in the Timeshare Regulations. In *Novuna & 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.

Mrs P share in the Allocated Property clearly, in my view, 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 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 does not 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 the sale of products such as the Fractional Club. They just regulated how such products were marketed and sold.

To conclude, therefore, that Fractional Club membership was marketed or sold to Mrs P 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 or sold membership to her as an investment, i.e. told her or led her to believe that Fractional Club membership offered her the prospect of a financial gain (i.e., a profit) given the facts and circumstances of *this* complaint.

When PR first complained, it said Mr P was told buying Fractional Club membership was an

investment, but she has not set out in any greater detail why she felt this was the case or what she was told that led her to believe Fractional Club membership was an investment. So I have also considered, amongst other things, the paperwork provided from the Time of Sale, as well as what I know about how the Supplier sold memberships at that time.

There is evidence in this complaint that the Supplier made efforts to avoid specifically describing membership of the Fractional Club as an 'investment' or quantifying to prospective purchasers, such as Mrs P, 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 Mrs P as an investment.

With that said, I acknowledge that the Supplier's training material left open the possibility that the sales representative may have positioned Fractional Club membership as an investment. I accept that it is *possible* that Fractional Club membership was marketed and sold to Mrs P as an investment in breach of Regulation 14(3) given the difficulty the Supplier was likely to have had in presenting a share in the net sales proceeds of the Allocated Property as an important feature of Fractional Club membership without breaching the relevant prohibition.

So, I have taken all of that into account. However, on my reading of the evidence provided and Mrs P's initial complaint about the sales process at the Time of Sale, I simply do not have enough for me to say that this was how the Supplier positioned Fractional Club membership to Mrs P. In the absence of persuasive evidence to suggest otherwise, I find that it is unlikely that the Supplier led her to believe that membership offered her the prospect of a financial gain (i.e., a profit).

But even if I am wrong to conclude that, on this occasion, membership was unlikely to have been sold in that way given what I have already said about Mrs P's recollections of the sales process at the Time of Sale, I am not currently persuaded that would make a difference to the outcome in this complaint anyway.

Was there an unfair relationship between the Lender and Mrs P?

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.

I am also mindful of what HHJ Waksman QC (as he then was) and HHJ Worster had to say in *Carney* and *Kerrigan* (respectively) on causation.

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

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

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

> *"[…] The terms of section 140A(1) CCA do not impose a requirement of "causation" in the sense that the debtor must show that a breach caused a loss for an award of substantial damages to be made. The focus is on the unfairness of the relationship,*

*and the court's approach to the granting of relief is informed by that, rather than by a demonstration that a particular act caused a particular loss. Section 140A(1) provides only that the court **may** make an order **if** it determines that the relationship is unfair to the debtor. […]*

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

So, it seems to me that, if I am to conclude that a breach of Regulation 14(3) led to a credit relationship between Mrs P and the Lender that was unfair to her and warranted relief as a result, whether the Supplier's breach of Regulation 14(3) (deemed to be something done by the Lender under section 140(1)(c) of the CCA) lead her to enter into the Purchase Agreement and the Credit Agreement is an important consideration.

But in this complaint, it is difficult to say with any certainty why Mrs P decided to take out Fractional Club membership. On one hand, she had already held memberships with the Suppler for several years and she plainly held an interest in taking holidays with the Supplier, as evidenced by PR saying she took out membership to save money on foreign holidays. But PR also said that one reason she took out membership was because she was told it was an investment. However, Mrs P did not provide any evidence to our investigator, and in the absence of any direct evidence from her, it is difficult to say that she was induced into the purchase on the basis that Fractional Club membership was a way of making a profit or financial gain.

On balance, therefore, even if the Supplier had marketed or sold the Fractional Club membership as an investment in breach of Regulation 14(3) of the Timeshare Regulations, I am not persuaded that Mrs P's decision to purchase Fractional Club membership at the Time of Sale was motivated by the prospect of a financial gain (i.e., a profit). And for that reason, I do not think the credit relationship between Mrs P and the Lender was unfair to her even if the Supplier had breached Regulation 14(3).

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

Mrs P has complained that her maintenance fees have increased since the Time of Sale, which was not something she had been told would happen. So I have thought about what information she was given about the fees at the Time of Sale and whether a lack of information provided then could have caused an unfair debtor-creditor relationship.

It is clear from the submissions of everyone involved in this complaint that there was a lot of information passed between the Supplier and Mrs P when she purchased membership of the Fractional Club at the Time of Sale. One of the main aims of the Timeshare Regulations and other relevant consumer protection legislation was to enable consumers to understand the financial implications of their purchase so that they were put in the position to make an informed decision. And if a supplier's disclosure and/or the terms of a contract did not recognise and reflect that aim, and the consumer ultimately lost out or almost certainly stands to lose out from having entered into a contract whose financial implications they did not fully understand at the time of contracting, that may lead to the Timeshare Regulations being breached, and, potentially the credit agreement being found to be unfair under Section 140A of the CCA.

However, as I have said before, the Supreme Court made it clear in *Plevin* that it does not

automatically follow that regulatory breaches create unfairness for the purposes of Section 140A of the CCA. The extent to which such mistakes render a credit relationship unfair must also be determined according to their impact on the complainant. Here, Mrs P has not set out what, if any, increases there have been or why, given her personal circumstances, such increases caused any unfairness. So I am unable to make any assessment of the impact of any increase on her.

Further, Mrs P had been a member with the Supplier for eight years before the Time of Sale and, from what I know about her earlier memberships, I think it was more likely than not that her existing maintenance fees would have increased over those eight years. So, I think at the Time of Sale, she would have been aware that maintenance fees were likely to increase.

Given the facts and circumstances of this complaint, I am not persuaded that the Supplier's provision of information about maintenance fee increases at the Time of Sale are likely to have prejudiced Mrs P's purchasing decision at the Time of Sale and rendered her credit relationship with the Lender unfair to her for the purposes of section 140A of the CCA.

Moreover, as I have not seen anything else to suggest that there are any other reasons why the credit relationship between the Lender and Mrs P was unfair to her because of an information failing by the Supplier, I am not persuaded it was.

Section 140A: Conclusion

In conclusion, therefore, given all of the facts and circumstances of this complaint, I do not think the credit relationship between the Lender and Mrs P was unfair to her for the purposes of Section 140A. And taking everything into account, I think it is fair and reasonable to reject this aspect of the complaint on that basis.

Conclusion

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

My final decision

I do not uphold Mrs P's complaint against Mitsubishi HC Capital UK PLC trading as Novuna Personal Finance.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs P to accept or reject my decision before 5 August 2024.

Mark Hutchings
Ombudsman