DRN-4756179

The complaint

Mr O complains that Shawbrook Bank Limited (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

On 24 October 2017 Mr O purchased membership of a fractional timeshare called the 'Signature Collection' which was provided by a timeshare provider ('the Supplier'). He entered two purchase agreements with the Supplier to buy two '*weeks'* of membership with 1,820 fractional points attached to each week. The sales documents said the total price of the purchases was £32,912.

Mr O paid for his Signature Collection membership by trading in an existing timeshare membership for £17,940 and taking finance through a new credit agreement with the Lender for £14,972. The interest rate was 11.3% and the term of the loan was 15 years.

Signature Collection membership was asset backed. This meant it gave Mr O more than just holiday rights. He'd also get a share in the net sale proceeds of a property named on the purchase agreement (the 'allocated property') after his membership term ended.

Using a professional representative ('the PR') Mr O wrote to the Lender on 15 February 2022 to raise a number of different concerns. Because the concerns raised in the letter of claim haven't changed since they were first raised, and because both sides are familiar with them, I won't repeat them in detail here beyond the summary above. In a letter it sent the PR on 11 April 2024, the Lender rejected Mr O's complaint on all grounds.

Meanwhile, Mr O asked the Financial Ombudsman Service to look into things.

An investigator for this service considered Mr O's 24 October 2017 Signature Collection purchase. On 27 March 2024 the investigator provided his view on the complaint. He didn't think the complaint should be upheld. In summary he said the allegations of misrepresentation weren't supported by any direct testimony from Mr O or any other evidence. The investigator noted that the price of the goods purchased by Mr O might mean his claim under section 75 of the CCA couldn't succeed, but the investigator hadn't reached a conclusion on that because he thought the claim didn't have grounds to succeed anyway.

Similarly the investigator said there wasn't enough evidence to show the relationship between the Lender and Mr O had been rendered unfair or that the loan was unaffordable for Mr O. The investigator also said the Supplier had been duly authorised to carry on the activity of credit broking, and the fact the Supplier's sales company had entered liquidation didn't provide a basis to uphold Mr O's complaint.

Mr O disagreed with the investigator's conclusion. The PR made submissions on his behalf, essentially continuing the arguments it had made in the letter of claim, and also providing a witness statement dated 18 April 2024 from Mr O and a different version of the Supplier's

training manual.

Because no agreement could be reached, the complaint was passed to me to review it afresh and make a decision.

I considered the matter and issued a provisional decision ('PD') dated 11 December 2025. In my PD, I said the following:

> '*Section 75 of the CCA: were there misrepresentations by the Supplier at the time of sale?*
>
> *The CCA introduced a regime of connected lender liability under section 75 which gives 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 there's an actionable misrepresentation and/or breach of contract by the supplier.*
>
> *For that consumer protection to be engaged, certain conditions must be met in relation to things such as, for instance, the cash price of the purchase and the nature of arrangements between the parties involved in the transaction. In this case the Lender doesn't dispute the relevant conditions are met. But for reasons I'll come to I needn't make any formal findings about those conditions here.*
>
> *Mr O's letter of complaint said that at the time of sale the Supplier misrepresented Signature Collection membership by doing the following:*
>
> 1. *Telling Mr O he'd purchased an investment that would 'considerably appreciate in value'*
> 2. *Promising Mr O a considerable return on the investment by saying he'd own a share in a property that would considerably increase in value*
> 3. *Telling Mr O he could sell his Signature Collection membership to the Supplier or easily to third parties at a profit*
> 4. *Making Mr O believe he'd have access to 'the holiday apartment' at any time all year round*
>
> *Points 1 and 2 don't strike me as misrepresentations even if they were representations made by the supplier (which I make no formal finding on). That prospective members were investing their money by buying a fraction or share of a property wasn't untrue. And even if the Supplier's sales representatives went further and suggested the share in question would increase in value, perhaps considerably so, that sounds like nothing more than an honestly held opinion. There's no accompanying evidence to persuade me the sales representative(s) said something that, while an opinion, amounted to a statement of fact that they didn't hold or couldn't have reasonably held.*
>
> *As for points 3 and 4, it's possible Signature Collection membership was misrepresented at the time of sale for one or both of those reasons. But I don't think it's probable. The letter of complaint and witness statement from Mr O gives little to none of the colour and context necessary to demonstrate that the Supplier made false statements of existing fact and/or opinion. There's no mention in the witness statement of Mr O being told he'd be able to sell his membership or take holidays at any time. There's no other evidence on file that supports the suggestion that Signature Collection membership was misrepresented for these reasons. So I don't think it was.*

Overall, while I know Mr O and the PR have concerns about the way Signature Collection membership was sold by the Supplier, when looking at the claim under section 75 of the CCA, I can only consider whether there was a factual and material misrepresentation by the Supplier. For the reasons I've given above, I'm not persuaded there was. And that means I don't think the Lender acted unreasonably or unfairly when it dealt with this particular section 75 claim.

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

I've already explained why I'm not persuaded the Supplier actionably misrepresented Signature Collection membership at the time of sale. But there are other aspects of the sales process which, being the subject of dissatisfaction, I must explore with section 140A in mind.

Having considered the entirety of the credit relationship between Mr O and the Lender, along with all the circumstances of the complaint, I don't think the credit relationship between them was likely to have been rendered unfair for the purposes of Section 140A. In coming to that conclusion, and in carrying out my analysis, I've looked at the following:

1. *The standard of the Supplier's commercial conduct – which includes its sales and marketing practices at the time of sale along with any relevant training material*
2. *The provision of information by the Supplier at the time of sale, including the contractual documentation and disclaimers made by the Supplier*
3. *The commission arrangements between the Lender and the Supplier at the Time of Sale and the disclosure of those arrangements*
4. *Evidence provided by both parties of what was likely to have been said and/or done at the time of sale*
5. *The inherent probabilities of the sale given its circumstances*
6. *When relevant, any existing unfairness from a related credit agreement.*

I've then considered the impact of these on the fairness of the credit relationship between Mr O and the Lender.

The Supplier's sales & marketing practices at the time of sale

Mr O's complaint about the Lender being party to an unfair credit relationship was made for several reasons.

The PR suggests the Lender didn't do the right checks before lending to Mr O. I haven't seen anything to persuade me this was the case in the circumstances of this complaint. In his April 2024 witness statement Mr O said another lender had refused to give him credit for the purchase of the membership, but the Lender agreed to provide credit only about five minutes later. It's likely Mr O means to suggest here that the Lender did insufficient checks and shouldn't have given him credit. But he hasn't said that he thought the lending was unaffordable for him and beyond these comments from Mr O I haven't seen anything to indicate that it was. Even if I found the Lender failed to do everything it should've done when it agreed to lend – and I make no such finding – to uphold the complaint on that basis I'd have to be satisfied the amount of the loan to Mr O was actually unaffordable and that Mr O lost out as a result, and then I'd have to consider whether the credit relationship with the Lender was unfair to him for this reason.

Connected to this is the suggestion by the PR that the credit agreement was arranged by an unauthorised credit broker and so the Lender wasn't permitted to

enforce it. But it looks to me as though the credit broker was duly authorised. But even if I put that aside, it seems to me like Mr O knew, amongst other things, how much he was borrowing and repaying each month, who he was borrowing from and that he was borrowing money to pay for Signature Collection membership. And because I haven't been able to find that the lending was unaffordable for him, even if it was arranged by a broker who lacked the necessary permission (which I make no formal finding about), I can't see why that led to a financial loss for Mr O such that I can say the credit relationship in question was unfair to him as a result. So I'm not persuaded it'd be fair or reasonable to tell the Lender to compensate him, even if the loan wasn't arranged properly.

The PR also says there were one or more unfair contract terms in the purchase agreement. But I can't see that any such terms were operated unfairly against Mr O in practice, nor that any such terms led him to behave in a certain way to his detriment. So I'm not persuaded any of the terms governing Signature Collection membership are likely to have led to an unfairness that warrants a remedy.

The PR has also said Mr O was subject to unfair sales pressure at the time of sale. I understand Mr O might have felt worn down by the sales. But I don't see how the sales process made him feel as if he had no choice but to purchase Signature Collection membership when he simply didn't want to. Also, he was given a 14-day cooling off period and he hasn't explained why he didn't cancel the membership during that period if he didn't in fact want to proceed with it. With that being the case, there's insufficient evidence to demonstrate Mr O made the decision to purchase Signature Collection membership because his ability to exercise that choice was significantly impaired by pressure from the Supplier.

So overall I don't think Mr O's credit relationship with the Lender was rendered unfair to him under Section 140A for any of the reasons above.

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

The PR says Mr O's credit relationship with the Lender was unfair to him because Signature Collection membership was marketed and sold to him as an investment in breach of the prohibition against selling timeshares in that way.

The Lender doesn't dispute – and I'm satisfied – that Mr O's Signature Collection 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 Signature Collection membership as an investment. This is what the provision said at the time of sale:

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

But the PR says the Supplier did exactly that at the time of sale – saying, in summary, that the Supplier told Mr O Signature Collection membership was the type of investment that would only increase in value.

The term 'investment' isn't defined in the Timeshare Regulations. But for the purposes of this 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.

A share in the allocated property clearly constituted an investment because it offered Mr O the prospect of a financial return – whether or not, as with all investments, the return was more than he first put in. But the inclusion of an investment element in Signature Collection membership didn't itself transgress the prohibition in Regulation 14(3). The prohibition is against the marketing and selling of a timeshare contract as an investment. Regulation 14(3) doesn't prohibit the mere existence of an investment element in a timeshare contract, or the marketing and selling per se of a timeshare contract that includes an investment element.

In other words, the Timeshare Regulations didn't ban products such as the Signature Collection. They just regulated the way such products were marketed and sold.

So to conclude that Signature Collection membership was marketed or sold to Mr O in breach of Regulation 14(3) I must be persuaded it was more likely than not that the Supplier marketed and/or sold membership to her as an investment. That is, I must be persuaded the Supplier told him or led him to believe Signature Collection membership offered her the prospect of a financial gain (i.e., a profit) given the facts and circumstances of this complaint.

There's competing evidence in this complaint as to whether Signature Collection membership was marketed and/or sold by the Supplier at the time of sale as an investment in breach of regulation 14(3) of the Timeshare Regulations.

On the one hand, it's clear the Supplier made efforts to avoid specifically describing membership of the Signature Collection as an 'investment' or quantifying to prospective purchasers such as Mr O the financial value of her share in the net sales proceeds of the allocated property along with the investment considerations, risks and rewards attached to them.

On the other hand, the Supplier's sales process left open the possibility that the sales representative may have positioned Signature Collection membership as an investment. So it's also possible that Signature Collection membership was marketed and sold to Mr O as an investment in breach of Regulation 14(3).

But whether or not the Supplier breached the relevant prohibition is not ultimately determinative of the outcome in this complaint for reasons I will come to shortly. So I don't need to make a formal finding on that particular issue for the purposes of this decision.

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

Having found it was possible the Supplier breached Regulation 14(3) of the Timeshare Regulations at the time of sale, I need to consider what impact that breach – if it occurred – had on the fairness of the credit relationship between Mr O and the Lender under the credit agreement and related purchase agreement. That's because case law makes it clear that regulatory breaches don't automatically create unfairness for the purposes of Section 140A. Such breaches and their consequences (if there are any) must be considered in the round, rather than in a narrow or technical way.

If I'm to conclude that a breach of Regulation 14(3) led to a credit relationship with the Lender that was unfair to Mr O and so warrants relief, I need to consider whether

the breach led Mr O to enter into the purchase agreement and the credit agreement. And on the evidence I've seen, I can't safely conclude that it did.

On my reading of the evidence before me, I find I'm unable to conclude that the prospect of a financial gain from Signature Collection membership was an important and motivating factor when Mr O decided to go ahead with the transaction I'm considering. I accept that Mr O did refer to the membership as an 'investment'. But he said nothing about any financial return he expected from that investment or how any such return factored into his decision making. Instead he mentioned investing 'in return for a better holiday'. And his statement suggests he was likely to have been motivated by the 'top end suites' he was shown and the incentives that were offered before he agreed to purchase.

To the extent that the witness statement does suggest Mr O's purchase was motivated by the prospect of a financial profit, I'm not in any case persuaded that the statement carries strong evidential weight. The letter of complaint submitted by the PR on Mr O's behalf was nearly identical to many other letters of complaint the PR wrote on behalf of other consumers. The personal testimony from Mr O was written in April 2024 – more than six years after the sale I'm considering, more than two years after the letter of complaint, and after the judgment was handed down in R (on the application of Shawbrook Bank Ltd) v Financial Ombudsman Service Ltd ('the Judicial Review'). Experience tells me that the more time that passes between a complaint and the event complained about, the greater the risk that the consumer's recollections will be vague and inaccurate, and/or potentially influenced by discussions with others, the news or even the complaint process itself. Here, there's no evidence that corroborates Mr O's recent testimony and there's a real risk that it was influenced by the letter of complaint and/or the judgment in Shawbrook.

Indeed, as there isn't any other evidence on file to corroborate Mr O's very recent evidence about his motivations at the time of sale, there seems to me to be a very real risk that Mr O's recollections were coloured by the judgment in Shawbrook & BPF v FOS. And with that being the case, I'm not persuaded that I can give his written recollections the weight necessary to find that the credit relationship in question was unfair for reasons relating to a breach of the relevant prohibition.

In conclusion, given the facts and circumstances of this complaint, I didn't think the Lender had acted unfairly or unreasonably when it dealt with Mr O's section 75 claim, and I wasn't persuaded that, under the credit agreement, the Lender had been party to a credit relationship with him that was unfair to him for the purposes of section 140A of the CCA. And having taken everything into account, I could see no other reason why it would be fair or reasonable to direct the Lender to compensate Mr O.

The Lender accepted the PD. The PR didn't accept it and provided some further comments and evidence to be considered.

Having received the relevant responses from both parties, I'm now finalising my decision.

The legal and regulatory context

In considering what's fair and reasonable in all the circumstances of the complaint, I'm 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 complaints very similar to this one – which can be found on the Financial Ombudsman Service's website. So it's not necessary for me to set out that context here. I set that out in some detail in my PD.

What I've decided – and why

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

Following the responses from both parties, I've considered the case afresh and, having done so, I've reached the same decision as that which I outlined in my provisional findings, for broadly the same reasons.

My role as an ombudsman isn't to address every single point which has been made to date, but to decide what's fair and reasonable in the circumstances of this complaint. If I haven't commented on, or referred to, something that either party has said, this doesn't mean I haven't considered it. Rather, I've focused here on addressing what I consider the key issues in deciding this complaint and explaining the reasons for reaching my final decision.

The PR's comments in response to the PD mostly related to the issue of whether the credit relationship between Mr O and the Lender was unfair. In particular, the PR commented on whether the Signature Collection membership was sold to Mr O as an investment at the time of sale. The PR also now argued for the first time that the payment of a commission by the Lender to the Supplier led to an unfair credit relationship.

As I outlined in my PD, the PR originally raised various other points of complaint, all of which I addressed at that time. But the PR didn't comment further on those other points in response to the PD. Indeed, the PR hasn't expressed disagreement with any of my provisional conclusions in relation to those other points. And since neither party has provided me with anything more in relation to the other points, I see no reason to change my conclusions in relation to them as set out in the PD. So I'll focus here on the points that the PR raised in response to the PD.

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

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

In response to the PD the PR said Mr O hadn't seen the Investigator's view on this complaint. It said that – in order not to influence Mr O's recollections – the PR had decided not to share the view with him. The PR also said Mr O hadn't heard about the judgment handed down in *Shawbrook and BPF v FOS*[1] and that if he did hear about it he wouldn't understand it because he didn't have a '*legal background'*. The PR said this meant Mr O's recollections hadn't been influenced by either the investigator's view or the judgment.

Part of my assessment of Mr O's testimony was to consider *when* it was written, and whether it might have been affected by external factors such as the widespread publication of the outcome of *Shawbrook and BPF v FOS*. Here, the PR responded to our investigator's view to say Mr O wanted an ombudsman to consider his complaint. I find it unlikely that Mr O took that position without knowing what the investigator had concluded. And I maintain that there's a risk Mr O's testimony was coloured by the investigator's view and/or the outcome in *Shawbrook & BPF v FOS*. I also maintain that the passage of time will have affected Mr O's recollections despite the PR disagreeing with that.

But, even if I were to accept that Mr O's testimony was unaffected by the judgment and the

[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) ('*Shawbrook & BPF v FOS*').

investigator's view and the passage of time, I wouldn't find the statement persuasive in support of Mr O's complaint.

I said in my PD that, separately from the way in which the evidence was provided, Mr O's statement itself didn't convincingly say his purchase was motivated by the view that he could make money from Signature Collection membership. So, I wasn't persuaded the evidence suggested Mr O purchased Fractional Club membership in whole or in part down to any breach of Regulation 14(3).

The PR disagreed with my reasoning on that point and said Mr O's interest in holidays didn't preclude an interest in making an investment. But to uphold Mr O's complaint on this point I wouldn't need to see that the investment element of the purchase was his sole motivation or even his main motivation. It need only have been a material factor. And in this case I'm not satisfied it was a material factor. Mr O's testimony alluded to the benefits of the holiday accommodation he'd be able to use under his membership. And apart from the use of the word '*invest*' there's nothing that I can interpret as a reference to the expectation of any financial gain arising from the membership. As I said in my PD, Mr O referred only to '*investing*' in better holidays without indicating that he considered – let alone was motivated by – the prospect of a profit.

So ultimately I remain unpersuaded that any breach of Regulation 14(3) was material to Mr O's purchasing decision.

The PR also said that in the judgment handed down in *Shawbrook & BPF v FOS*, it wasn't challenged that the product in question was marketed and sold as an investment. But, as I explained in my provisional decision, the Timeshare Regulations didn't ban products such as the Signature Collection. They just regulated how such products were marketed and sold. And the judgment referred to didn't make a blanket finding that all such products were mis-sold in the way the PR appears to suggest. Any complaint needs to be considered in the light of its specific circumstances.

So, as I said before, even if the Supplier had marketed or sold the membership as an investment in breach of Regulation 14(3) (which I still make no finding on here), I'm not persuaded Mr O's decision to make the purchase was motivated by the prospect of a financial gain. So, I still don't think the credit relationship between him and the Lender was unfair to him for this reason.

<u>The provision of information by the Supplier at the time of sale</u>

The PR says a payment of commission from the Lender to the Supplier at the time of sale should lead me to uphold this complaint because, simply put, information about that payment went undisclosed at the time of sale.

As both sides already know, the Supreme Court handed down an important judgment on 1 August 2025 in a series of cases concerned with the issue of commission: *Johnson v FirstRand Bank Ltd, Wrench v FirstRand Bank Ltd and Hopcraft v Close Brothers Ltd* [2025] UKSC 33 ('*Hopcraft, Johnson and Wrench*').

The Supreme Court ruled that, in each of the three cases, the commission payments made to car dealers by lenders were legal, as claims for the tort of bribery, or the dishonest assistance of a breach of fiduciary duty, had to be predicated on the car dealer owing a fiduciary duty to the consumer, which the car dealers did not owe. A '*disinterested duty*', as described in *Wood v Commercial First Business Ltd & ors and Business Mortgage Finance 4 plc v Pengelly* [2021] EWCA Civ 471, is not enough.

However, the Supreme Court held that the credit relationship between the lender and Mr Johnson was unfair under Section 140A of the CCA because of the commission paid by the lender to the car dealer. The main reasons for that conclusion included, amongst other things, the following factors:

1. The size of the commission (as a percentage of the total charge for credit). In Mr Johnson's case it was 55%. This was *'so high'* and *'a powerful indication that the relationship…was unfair* (see paragraph 327);

2. The failure to disclose the commission; and

3. The concealment of the commercial tie between the car dealer and the lender.

The Supreme Court also confirmed that the following factors, in what was a non-exhaustive list, would normally be relevant when assessing whether a credit relationship was unfair under Section 140A of the CCA:

1. The size of the commission as a proportion of the charge for credit;

2. The way commission is calculated (a discretionary commission arrangement, for example, may lead to higher interest rates);

3. The characteristics of the consumer;

4. The extent of any disclosure and the manner of that disclosure (which, insofar as section 56 of the CCA is engaged, includes any disclosure by a supplier when acting as a broker); and

5. Compliance with the regulatory rules.

From my reading, the Supreme Court's judgment in *Hopcraft, Johnson and Wrench*, sets out principles which apply to credit brokers other than car dealer–credit brokers. So, when considering allegations of undisclosed payments of commission like the one in this complaint, *Hopcraft, Johnson and Wrench* is relevant law that I'm required to consider under Rule 3.6.4 of the Financial Conduct Authority's Dispute Resolution Rules ('DISP').

But, given the facts and circumstances of this complaint, I don't think *Hopcraft, Johnson and Wrench* assists Mr O in arguing that his credit relationship with the Lender was unfair to him for reasons relating to commission.

I haven't seen anything to suggest the Lender and Supplier were tied to one another contractually or commercially in a way that wasn't properly disclosed to Mr O. Nor have I seen anything that persuades me the commission arrangement between them gave the Supplier a choice over the interest rate that led Mr O into a credit agreement that cost disproportionately more than it otherwise could have.

I acknowledge it's possible the Lender and Supplier failed to follow the regulatory guidance in place at the time of sale insofar as it was relevant to disclosing commission arrangements between them.

But, as I've said before, the case law on section 140A makes clear that regulatory breaches don't 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. And with that being the case, it's not necessary to make a formal finding on that. That's because – even if the Lender and Supplier failed to follow relevant regulatory guidance at the time of sale – for the reasons set out below, I don't think any such failure is itself a reason to find the credit relationship in question unfair to Mr O.

In stark contrast to the facts of Mr Johnson's case, the amount of commission paid by the Lender to the Supplier for arranging Mr O's credit agreement wasn't high. At £748.60, it was only 5% of the amount borrowed and even less than that (4.63%) as a proportion of the charge for credit. So, had Mr O known at the time of sale that the Supplier would be paid a flat rate of commission at that level, I'm not persuaded he'd have failed to understand that or have questioned the size of the payment at the time. After all, Mr O wanted Signature Collection membership and didn't suggest he had means of his own to pay for it. And at such a low level, the impact of commission on the cost of the credit he needed for the membership he wanted doesn't strike me as disproportionate. So, I think Mr O would still have taken out the loan to fund his purchase at the time of sale had the amount of commission been disclosed.

What's more, based on what I've seen so far, the Supplier's role as a credit broker wasn't a separate service and distinct from its role as the seller of timeshares. It was simply a means to an end in the Supplier's overall pursuit of a successful timeshare sale. I can't see that the Supplier gave an undertaking – either expressly or impliedly – to put aside its commercial interests in pursuit of that goal when arranging the credit agreement. And because it wasn't acting as an agent of Mr O but as the supplier of the contractual rights he obtained under the purchase agreement, I'm not persuaded that – when arranging the credit agreement – the Supplier had an obligation of '*loyalty'* and thus a fiduciary duty to Mr O.

Overall, therefore, I don't find that the commission arrangements between the Supplier and Lender were likely to have led to an inequality of knowledge that was sufficiently extreme as to render the credit relationship unfair to Mr O.

Section 140A conclusion

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

Commission: The alternative grounds of complaint

While I've found that Mr O's credit relationship with the Lender wasn't unfair to him for reasons relating to the commission arrangements between it and the Supplier, two of the grounds on which I came to that conclusion also constitute separate and freestanding grounds to Mr O's complaint about an unfair credit relationship. So for completeness I've considered those grounds on that basis here.

The first ground relates to whether the Lender is liable for the dishonest assistance of a breach of fiduciary duty by the Supplier because it took a payment of commission from the Lender without telling Mr O (i.e., secretly). And the second relates to the Lender's compliance with the regulatory guidance in place at the time of sale insofar as it was relevant to disclosing the commission arrangements between them.

However, for the reasons I gave above, I'm not persuaded the Supplier – when acting as credit broker – owed Mr O a fiduciary duty. So the remedies that might be available at law in relation to the payment of secret commission aren't, in my view, available to him. And while it's possible the Lender failed to follow regulatory guidance that was in place at the time of sale insofar as it was relevant to disclosing commission arrangements between it and the Supplier, I don't think any such failure on the Lender's part is itself a reason to uphold this complaint because, for the reasons I also gave above, I think Mr O would still have taken out the loan to fund his purchase at the time of sale had there been more adequate disclosure of the commission arrangements that applied at that time.

Conclusion

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

My final decision

For the reasons I've set out my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O to accept or reject my decision before 5 March 2026.

Lucinda Puls
Ombudsman