DRN-4928272

The complaint

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

What happened

I'll start by explaining that whilst both Mr and Mrs F are mentioned on much of the contemporary documents which relate to this complaint, it seems the purchase I'm making a decision about here was financed by a Credit Agreement only in Mr F's name. For this reason, I'll periodically refer only to Mr F, however, I do understand that both he and his wife were involved.

We know that over a relatively short time period in 2018 – 2019 Mr and Mrs F bought three memberships from a timeshare provider (the 'Supplier'). We haven't been sent many details about the circumstances of their first purchase, and this isn't the event being complained of here. However, my understanding is that this was a form of 'Trial' timeshare membership, bought in September 2018.

Mr and Mrs F then went on to buy a second timeshare product, in April 2019. This was a Fractional Club membership; a type of product which meant it provided holidaying rights, based on a points system. Mr and Mrs F bought 1,380 points on this occasion. But the Fractional membership also included a share in the net sale proceeds of a property named on the Purchase Agreement (the 'Allocated Property') after the membership term ended. In this case this was in 2032. However, because they borrowed the money to finance this purchase from a different financial company - that complaint is a separate one and has been set up against a different lender. I've already issued a separate provisional decision about this complaint. I therefore won't be making any decision here regarding this second purchase, although due to its proximity in time, I will be making some references to it and touching on the circumstances of that sale.

The product at the centre of *this* complaint is the membership of a third timeshare which I will once again refer to as a Fractional membership. This was purchased on 27 August 2019 and on this occasion only Mr F's sole name was on the Credit Agreement. He borrowed £7,440 from the Lender. This was payable over 180 months meaning the total to be paid over the term was £15,469 (11.9% APR).

So, to be clear then, the complaint I'm dealing with here relates only to the Fractional Club purchase which Mr F funded by borrowing the £7,440 in August 2019 from Mitsubishi HC Capital UK PLC (trading at the time as Novuna Personal Finance). This purchase also provided certain holiday rights allocated on a points basis, of which Mr F 'upgraded' to 1,820 points. Like before, the Fractional Club membership was also asset backed, which meant it gave Mr F more than just holiday rights, it also included a share in the net sale proceeds of an Allocated Property named on the Purchase Agreement after this membership term ended, in this case 2033.

Mr F – using a professional representative (the 'PR') – wrote to the Lender on 22 January 2024 (the 'Letter of Complaint') to raise a number of different concerns. The Lender rejected the complaint on every ground. The complaint was then referred to the Financial Ombudsman Service. It was assessed by one of our investigators who, having considered the information on file, also rejected the complaint on its merits. Mr F disagreed with the investigator's assessment and has asked for an ombudsman's decision – which is why it was passed to me.

I issued a provisional decision (PD) about this case on 14 October 2025 in which I comprehensively set out my reasoning for not upholding the complaint. The PD should be read in conjunction with this final decision. However, the PD invited the parties to respond with any further information or evidence they wanted to submit. Further to this, I issued a second communication (a 'side letter') to the parties on 22 December 2025 about commission. In this I said I wasn't persuaded that the commission arrangements between the Supplier and the Lender were likely to have led to a sufficiently extreme inequality of knowledge that rendered the credit relationship unfair.

I've had a response from Mr F's PR which basically disagrees with my PD. I have read everything said on his behalf. But as I said before, 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. I have already set out in the PD the legal and regulatory context in which I'm making my decision about this case. For further information, I have also considered the following:

The Consumer Credit Sourcebook ('CONC') – Found in the Financial Conduct Authority's (the 'FCA') Handbook of Rules and Guidance

Below are the most relevant provisions and/or guidance as they were at the relevant time:

- CONC 3.7.3 [R]
- CONC 4.5.3 [R]
- CONC 4.5.2 [G]

The FCA's Principles

The rules on consumer credit sit alongside the wider obligations of firms, such as the Principles for Businesses ('PRIN'). Set out below are those that are most relevant to this complaint:

- Principle 6
- Principle 7
- Principle 8

What I've decided – and why

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

Having done this, I am not upholding this complaint. This is my final decision.

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

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

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

It was said in the Letter of Complaint that Fractional Club membership had been misrepresented by the Supplier at the Time of Sale because Mr and Mrs F were:

1. Told that they had purchased an investment that would appreciate in value when that was not true.
2. Told that they would own a share in a property that would increase in value during the membership term when that was not true.
3. Given misleading information about the ongoing management fees.
4. Made to believe that they would have access to an "apartment' at any time all year round when that was not true.

However, neither points 1 nor 2 strike me as misrepresentations even if such representations had been made by the Supplier (which I make no formal finding on). Telling prospective members that they were investing their money because they were buying a fraction or share of one of the Supplier's properties was not untrue. Even if the Supplier's sales representatives went further and suggested that the share in question would increase in value, perhaps considerably so, that sounds like nothing more than a honestly held opinion as there isn't enough evidence to persuade me that the relevant sales representative(s) said something that, while an opinion, amounted to a statement of fact that they did not hold or could not have reasonably have held.

As for points 3 and 4, while it's *possible* that this membership was misrepresented at the Time of Sale for these reasons, I don't think it's *probable*. These allegations are given little to none of the detail necessary to demonstrating that the Supplier made a false statement of existing fact and/or opinion. Since there's no other supporting evidence on file to back up the suggestion that the membership was misrepresented in these ways, I don't think it was.

So, while I recognise that Mr F and the PR have concerns about the way in which this membership was sold by the Supplier, when looking at the claim under Section 75 of the CCA, I can only consider whether there was a factual and material misrepresentation by the Supplier. For the reasons I've set out above, I'm not persuaded that there was. This means I don't think the Lender acted unreasonably or unfairly when it dealt with this 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 that Fractional Club membership was actionably misrepresented by the Supplier at the Time of Sale. But there are other aspects of the sales process that, being the subject of dissatisfaction, I must explore with Section 140A in mind if I'm to consider this complaint in full – which is what I've done next.

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

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

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

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

The PR's Letter of Complaint sets out several reasons why it considers the Lender being party to an unfair credit relationship. Alongside the Letter of Complaint is a client personal statement evidently provided by Mr a Mrs F and dated two days prior. This set out their personal recollections and said:

"*We took finance for the purchase of our investment into* [the Supplier] *from* [a previous lender] *and from Novuna Finance. The reason for this was because we were led to believe on both occasions that at the end of the time period we would own the share and we could then sell it back and get at least back what we had paid for it. It came across that it was an asset and we understood it to be an investment.*"

However, their statement said no more than this. And I cannot ignore the fact that the Letter of Complaint from the PR bears very little, if indeed any, resemblance to Mr and Mrs F's own statement.

The PR says, for instance, that the right affordability checks weren't carried out before the Lender lent to Mr F, something Mr a Mrs F have not referred to at all in their statement. That said, I haven't seen anything to persuade me that was the case in this complaint given its circumstances. But even if I were to find that the Lender failed to do everything it should have when it agreed to lend (and I make no such finding), I would have to be satisfied that the money lent to Mr F *was actually unaffordable,* before also concluding that he lost out as a result and then consider whether the credit relationship with the Lender was unfair for this reason. But from the information provided, I am not satisfied that the lending was unaffordable for Mr F.

Connected to this is the suggestion by the PR that the Credit Agreement was arranged by an unauthorised credit broker, the upshot of which is to suggest that the Lender wasn't permitted to enforce the Credit Agreement. I am sure of the fact that the Supplier (broker) was authorised at the time of sale and so my finding here is that this allegation is unfounded and without merit.

Mr and Mrs F's PR also allege they were subjected to oppressive sales pressure at the point of the August 2019 sale. However, I noted firstly that there is very little description within the PR's allegation of what actually was said or done by the Supplier during the sales presentation that made Mr and Mrs F feel as if they had no choice but to purchase Fractional Club membership. I'm not entirely surprised by this lack of detail or further explanation in the Letter of Complaint, given the absence of any comments about 'pressure' from Mr and Mrs F themselves, within their own statement.

I've also noted that the PR's description of all their complaint points, including this specific allegation of an *"oppressive meeting on 27 August 2019"* is completely identical to an allegation about undue pressure made regarding the earlier sale (in April 2019). It's also identical to a number of other, unconnected, timeshare complaints I've seen brought by this PR. However, as both sales meetings involved different parties, at different times and in different locations, I find these identical and brief descriptions of an *"oppressive meeting on …."* to be lacking in substance, and unpersuasive.

I have, nonetheless, still considered that even if there were such identical features, should I change my view on this? However, given the way this allegation has been put in this complaint, I find it very difficult to understand why Mr and Mrs F would have endured an oppressive sales event in April where they made a purchase (which they've since complained was the subject of pressure) only to agree to another sale in August, under apparently identical circumstances.

So, whilst I acknowledge that they could have felt weary after a sales process that went on for a long time for example, there's simply no evidence supporting this. Mr and Mrs F were also given a 14-day cooling off period at each sales' event and they have not provided any explanation for why they did not cancel their membership on either occasion.

With all of these things being the case, there is no supporting evidence in this particular complaint demonstrating that Mr and Mrs F made the decision to purchase Fractional Club membership because their ability to exercise that choice was significantly impaired by pressure from the Supplier.

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

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

The Lender does not dispute, and I am satisfied, that Mr F's Fractional Club membership met the definition of a "timeshare contract" and was a "regulated contract" for the purposes of the Timeshare Regulations.

Regulation 14(3) of the Timeshare Regulations prohibited the Supplier from marketing or selling Fractional Club membership as an investment. This is what the provision said at the Time of Sale:

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

But the PR says that the Supplier did exactly that at the Time of Sale – saying, in summary, that Mr and Mrs F were told by the Supplier that Fractional Club membership was the type of investment that would only 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.

A share in the Allocated Property clearly constituted an investment as it offered Mr and Mrs F 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 membership was marketed or sold to Mr and Mrs F 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 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.

I have dealt with many similar timeshare sales and am familiar with the processes generally used. There is competing evidence in this complaint as to whether Fractional Club membership was marketed and/or sold by the Supplier at the Time of Sale as an investment in breach of regulation 14(3) of the Timeshare Regulations.

On the one hand, it is clear that the Supplier made efforts to avoid specifically describing membership of the Fractional Club as an 'investment' or quantifying to prospective purchasers, such as Mr F, the financial value of the share in the net sales proceeds of the Allocated Property along with the investment considerations, risks and rewards attached to them. On the other hand, I acknowledge that the Supplier's sales process left open the possibility that the sales representative may have positioned Fractional Club membership as an investment. So, I accept that it's equally possible that Fractional Club membership was marketed and sold to Mr F as an investment in breach of Regulation 14(3).

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

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

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

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

To help me decide this point, I've considered the allegations as put forward by the PR. I have also reverted back to Mr and Mrs F's client personal statement and thought carefully about what they themselves had to say. It's also fair and reasonable that I consider all the wider circumstances in which this sale took place.

In so far as any allegation of investment related marketing carried out by the Supplier during the sale is concerned, the PR says, *"they were told they had purchased an investment which would appreciate in value."* The PR also says Mr and Mrs F were told, "*their share in "property and its value would increase during the term".* However, there was also no further or descriptive detail underpinning these allegations within the Letter of Complaint. And importantly, I once again don't think these allegations are reflected or reinforced by Mr and Mrs F's own memories of the August 2019 sale as set out in their client personal statement. Their client personal statement was a document which, although unsigned, was evidently written in January 2024 and which afforded Mr and Mrs F the opportunity to describe for themselves what happened. In this they only say they hoped to eventually sell the fraction at the end of the period, which for them was in 2033, and get back at least what they paid for it.

However, as I've mentioned, I think it's reasonable to note that Mr and Mrs F's recollections are very brief indeed, limited as they are to just three sentences in their statement. And given the specific allegations in the PR's Letter of Complaint about there being prohibited 'investment' marketing involved in this August 2019 sale, there is simply not enough commentary from Mr and Mrs F themselves as regards the alleged marketing of the timeshare as an investment, or even of their wider experience of holidaying through the Supplier.

I think it's also fair and reasonable to make the point again that, as well as not substantiating the PR's allegations about an appreciation in 'investment' value (in prohibition of the rules) Mr and Mrs F portray both the April and August 2019 sales as completely identical. I say this because their statement – short as it is – seems to me to be referring to *both* purchases. This means that the brevity of their statement covers both sales and does not differentiate at all between these two sales events. As I've already implied, this is not something I find persuasive, given all the circumstances of this case.

I think it's also reasonable to point out that Mr and Mrs F's client personal statement has been made four-and-a-half years after the April 2019 sale and so the risk of recollection inaccuracy is something I need to consider. In my view, this adds considerable weight to my general point above about there being a real danger of their testimony being somewhat unreliable and inaccurate due to the passage of time.

I am also mindful that this risk of inaccuracy is further increased here by the timing of the complaint and of their statement: the bringing of the complaint and their own statement were evidently *after* the influential court judgment on Shawbrook & BPF v FOS[1]. This case put several important legal and factual findings into the public domain that have had a significant influence on how future complaints about timeshares—especially fractional ownership models—are assessed. It brought significant public attention to issues specifically surrounding the alleged marketing and / or sale of timeshares as investments, which Regulation 14(3) prohibited. So, I think there's a high risk that Mr and Mrs F's suite of allegations - including those made in the Letter of Complaint and in their statement - were influenced by these subsequent events.

The Supplier provided a copy of its contemporaneous contact notes which it says record some of the rationale Mr and Mrs F used at the time, when pressing ahead with the August 2019 sale:

"*Couple said they wanted more points and this is within their budget, they understand this is a standalone finance with* [Novuna] *they are happy with this it works out at £1 difference*

[1] *R (on the application of [business] 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)

between this and a consolidstation [sic] *and this was shown to them they said they aim to pay the loans off early and the extra months interest was explained, they said they were happy with this.*"

The Supplier also provided a copy of its contact notes from the April 2019 sale, which recorded, "...*didn't travel much in [the] last few years so they want to start taking holidays as of now. Thinking about good week away pre [sic] year and some small breaks if possible….".*

I accept I should probably treat these notes with a little caution. But in my view, this serves to underline what I think is obvious – that Mr and Mrs F had a very strong interest in the holidaying benefits provided by their timeshare membership(s). I have also considered that in making the August 2019 sale, Mr and Mrs F were *increasing* the number of timeshare holiday points they already held, and they were essentially upgrading from their existing membership. In my view, there are therefore strong reasons to conclude that this upgrading of their holiday rights appears to have been a significant factor in their August 2019 purchasing decision. In fact, I think the notes made by the Supplier(s) at the time of both sales serve to underline Mr and Mrs F's interest in the holiday benefits their membership(s) offered. All this leads me to think they would have gone ahead with the purchase whether or not it had been presented to them as an investment opportunity.

So, to be clear, my view here is that 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 Mr and Mrs F's decision to purchase Fractional Club membership was motivated by the prospect of a financial gain (i.e., a profit).

On the contrary, I don't think the evidence supports this. I think the evidence strongly suggests they would have pressed ahead with their purchase whether or not there had been a breach of Regulation 14(3). On my reading of all the evidence before me, the prospect of a financial gain from Fractional Club membership was not an important and motivating factor when Mr and Mrs F decided to go ahead with this purchase and Mr F took out the credit to pay for it. Of course, that doesn't mean they weren't interested in a share in the Allocated Property. After all, that wouldn't be surprising given the nature of the product at the centre of this complaint. But as they themselves do not persuade me that this purchase was motivated by the share in the Allocated Property *and* the possibility of a profit, I don't think a breach of Regulation 14(3) by the Supplier was likely to have been material to the decision they ultimately made.

I therefore do not think the credit relationship between Mr F and Mitsubishi HC Capital UK PLC (trading at the time as Novuna Personal Finance) was unfair even if the Supplier had breached Regulation 14(3).

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

Mr F says he and Mrs F were not given sufficient information at the Time of Sale by the Supplier about the ongoing costs of Fractional Club membership. The PR also says that the contractual terms governing the ongoing costs of membership and the consequences of not meeting those costs were unfair contract terms.

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

I acknowledge that it is also possible that the Supplier did not give Mr F sufficient information, in good time, on the various charges they could have been subject to as Fractional Club members in order to satisfy the requirements of Regulation 12 of the Timeshare Regulations (which was concerned with the provision of 'key information'). But even if that was the case, I cannot see that the ongoing costs of membership were applied unfairly in practice.

As for the PR's argument that there were one or more unfair contract terms in the Purchase Agreement, I can't see that any such terms were operated unfairly against Mr F in practice, nor that any such terms led them to behave in a certain way to their detriment. And with that being the case, I'm not persuaded that any of the terms governing Fractional Club membership are likely to have led to an unfairness that warrants a remedy.

Responses to my PD

I received a response to my PD but nothing regarding the later commission-related 'side letter'.

The PR has highlighted under Section 140B (9) of the CCA, the burden of proof falls on the Lender to disprove the allegation that its relationship with Mr F was unfair. I agree that this is correct, placing a burden on lenders during the process of litigation. That does not mean, though, that the Lender – or I – should take a claim at face value. There remains an onus on Mr F to provide some evidence for the claim, despite the overall burden of proof resting with the Lender, as was set out in the judgment in *Smith and another v Royal Bank of Scotland plc* [2023] UKSC 34 at paragraph 40. I also remind both parties that it is my role to make findings on what I consider to be fair and reasonable in all the circumstances of any given complaint.

I'm also satisfied that, where appropriate, I have applied the law and the various rules correctly. I previously told both parties in my PD about the overall legal and regulatory context that I think is relevant to this complaint. The PR now objects to the approach I've taken, believing that I have detracted from the judgment in *Shawbrook & BPF v FOS*[2] and the case law that contributed to it, by requiring Mr F to have been primarily or mainly motivated by the investment element in order to uphold the complaint. But I did not make such a finding. I basically said that, in my view, Mr F was motivated by the holiday options offered by the Supplier – and this was a factor in my overall conclusion. In light of all the available evidence I said that he and Mrs F would, on balance, have pressed ahead with the purchase of the membership even if there had been a breach of Regulation 14(3).

I will also address the PR's point regarding the apparent ambiguity in the proposed sale date of the Allocated Property. The PR suggests that a delayed sale date could lead to an unfairness to Mr F in the future, as any delay could mean a delay in the realisation of their share in the Allocated Property.

It does appear that the proposed date for the commencement of the sales process, as set out on the owners' certificate, is 2033. This same date was set out under point 1 of the Members Declaration, which was signed by Mr F. This date indicates that the membership has a term of 14 years. The ambiguity identified by the PR is that in the Information Statement provided as part of the purchase documentation it says the following:

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[2] *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').

> *"The Owning Company will retain such Allocated Property until the automatic sale date in **19 years' time** or such later date as is specified in the Rules or the Fractional Rights Certificate." (my emphasis)*

However, it seems clear to me that the contractual commencement date for the start of the sales process is 2033 – as above. This actual date was repeated in the (signed for) sales documentation as I've set out above. The Information Statement is, in my view, reflective of the fact that most fractional memberships were set up to run for nineteen years. But not all memberships attached to a given Allocated Property were sold at exactly the same time, so often the time left before the sale date was less than nineteen years at the actual time of sale. I accept that this could be confusing, however I do not think Mr F was misled by this at the Time of Sale. So, I can't see that this is a reason to find the credit relationship unfair and uphold this complaint.

Commission

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 coming to that conclusion included, amongst other things, the following factors:

1. The size of the commission (as a percentage of the total credit charge). 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, will normally be relevant when assessing whether a credit relationship was/is unfair under Section 140A of the CCA:

1. The size of the commission as a proportion of the charge for credit;
2. The way in which 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 of the Supreme Court's judgment in *Hopcraft, Johnson and Wrench*, it 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 I don't think Hopcraft, Johnson and Wrench assists Mr F in arguing that a credit relationship with the Lender was unfair to them for reasons relating to commission given the facts and circumstances of this complaint.

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

I recognise that it's possible the Lender and the Supplier failed to follow the regulatory guidance in place at the Time of Sale insofar as it was relevant to disclosing the commission arrangements. But as I noted in my PD, case law on section 140A makes clear that regulatory breaches do not automatically lead to an unfair credit relationship, and that such breaches and any consequences must be considered in the round rather than in a narrow or technical way.

With that being the case, even if the Lender and the Supplier failed to follow the relevant regulatory guidance at the Time of Sale, I'm not minded that any such failure is itself a reason to find the credit relationship in question unfair to Mr F. I say this for the following reasons.

In stark contrast to the facts in Mr Johnson's case, the amount of commission paid by the Lender to the Supplier for arranging Mr F's Credit Agreement wasn't high. At £297.60, it was only 4% of the amount borrowed and 3.7% as a proportion of the charge for credit – which is the calculation the Supreme Court used. Had Mr F known at the Time of Sale that the Supplier was going to be paid a flat rate of commission at this level, I'm not persuaded that he either wouldn't have understood that or would have otherwise questioned the size of the payment at that time. After all, Mr F wanted the membership and had no obvious means of their own to pay for it. And at such a level, the impact of commission on the cost of the credit he needed for a timeshare he wanted, doesn't strike me as being disproportionate. So, I think he would still have taken out the loan to fund the 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 to one side its commercial interests in pursuit of that goal when arranging the Credit Agreement. As it wasn't acting as an agent of Mr F but as the supplier of contractual rights obtained under the Purchase Agreement, the transaction doesn't strike me as one with features that suggest the Supplier had an obligation of 'loyalty' when arranging the Credit Agreement and thus a fiduciary duty.

I don't consider it necessary for me to take into account any commission the Supplier might have paid to its sales representatives, or that this should be disclosed or factored into any calculation used to determine unfairness. Even if any such arrangement was in place (and I make no finding in this respect), its disclosure and/or payment would be further removed

from any obligations the Supplier might have held, and be even less likely to have an impact on Mr F's decision to enter into the Credit Agreement.

Overall, therefore, I'm not persuaded that the commission arrangements between the Supplier and the Lender were likely to have led to a sufficiently extreme inequality of knowledge that rendered the credit relationship unfair to Mr F.

Commission: The Alternative Grounds of Complaint

While I've found that Mr F's credit relationship with the Lender wasn't unfair for reasons relating to the commission arrangements, two of the grounds on which I came to that conclusion also constitute separate and freestanding complaints to Mr F's complaint about an unfair credit relationship. 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 F (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 set out above, I'm not persuaded that the Supplier – when acting as credit broker – owed Mr F 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. And while it's possible that the Lender failed to follow the regulatory guidance in place at the Time of Sale insofar as it was relevant to disclosing the 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 set out above, I think he would still have taken out the loan to fund the purchase at the Time of Sale had there been more adequate disclosure of the commission arrangements that applied at that time.

Conclusion

I am very sorry to have to disappoint Mr F. But as I have comprehensively explained, I do not think that the Lender acted unfairly or unreasonably when it dealt with the relevant Section 75 claim. Also, I'm not persuaded that the Lender was party to a credit relationship with Mr F that was unfair for the purposes of Section 140A of the CCA – nor do I see any other reason why it would be fair or reasonable to direct the Lender to compensate him.

My final decision

I do not uphold this complaint against Mitsubishi HC Capital UK PLC.

I do not direct Mitsubishi HC Capital UK PLC to do anything more.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 19 February 2026.

Michael Campbell
Ombudsman