DRN-5009834

The complaint

Mr and Mrs B's complaint is, in essence, that First Holiday Finance Limited (the 'Lender') acted unfairly and unreasonably by (1) being party to an unfair credit relationship with them 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

The product at the centre of this complaint is their membership of a timeshare which I will refer to as the Fractional Club membership. This was purchased on 10 September 2019 with both Mr and Mrs B's names on the Credit Agreement. They put down a £500 deposit which I've assumed was from their own funds and borrowed £5,401 from the Lender. This was payable over 144 months at £76.97 per month, meaning the total amount to be paid over the term was £11,084.

This 2019 Fractional Club membership was a type of product which meant it provided future holidaying rights at the Supplier's group of resorts, based on a points system. Mr and Mrs B bought 1,380 points on this occasion. However, the Fractional Club membership was also asset backed, which meant it gave Mr and Mrs B more than just holidaying rights. It included a share in the net sale proceeds of an Allocated Property named on the Purchase Agreement after this membership term ended, which in this case was in 2037.

Mr and Mrs B used a professional representative (the 'PR') which wrote to the Lender on 28 February 2024 (the 'Letter of Complaint') to raise a number of different concerns.

The Lender rejected the complaint on every ground. It explained that Mr and Mrs B had first attended a sales seminar in London in early 2018. The Supplier said that at this meeting Mr and Mrs B first expressed an interest in buying a form of 'trial' timeshare membership but then withdrew, citing the time not being right for them to make a purchase. But they were given a free holiday voucher at this event which they exercised in November 2018, by visiting Tenerife. Here they purchased an initial Fractional membership product with the Supplier. However, this isn't the product raised in the Letter of Complaint.

After this November 2018 purchase, it seems Mr and Mrs B were provided with a further promotional holiday voucher, which they exercised (again in Tenerife) in September 2019. The Supplier says it was on this occasion they were invited to an 'existing members meeting' where they agreed to upgrade to the Fractional membership now being complained of. The Supplier says its contemporaneous sales notes confirm that the reason for this September 2019 purchase was listed as to obtain more holiday points – increasing from 1,040 to 1,380 points – and certain other holiday experience upgrades.

After raising their complaint, Mr and Mrs B weren't satisfied with the Supplier's response rejecting it. So, their complaint was referred to the Financial Ombudsman Service. It was assessed by one of our investigators who didn't think we should uphold it. Mr and Mrs B disagreed with the investigator's view and asked for an ombudsman's decision – which is why it was passed to me.

I issued a provisional decision (PD) about this case on 23 October 2025 in which I comprehensively set out my reasoning for not upholding the complaint. However, I 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 18 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 to Mr and Mrs B. In fact, there was no commission paid in relation to this case.

I've had a response from Mr and Mrs B's PR which basically disagrees with my PD. I have read everything said on their behalf with great care. And 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.

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 B 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 assurances at the time of the sale that they would have access to certain holidays 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 point 3, while it's possible that Fractional Club membership was misrepresented at the Time of Sale for this reason, I don't think it's probable. This allegation, as put by the PR, is given none of the colour or context necessary to demonstrating that the Supplier made false statements of an existing fact.

As I'll also explain more about later, Mr and Mrs B attached a client personal statement to their complaint submission in 2024. This statement provided their own personal perspective written, as it were, in their own hand. But they themselves don't repeat this alleged misrepresentation in this, and the contemporary documentation I've seen from the sale doesn't support that such a misrepresentation would likely have been made. Since there's no other specific examples or supporting evidence on file to back up the suggestion that the membership was misrepresented in this way, I don't think it was.

So, while I recognise that Mr and Mrs B and the PR have concerns about the way in which Fractional Club 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. So, this means that I don't think that 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 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 and Mrs B 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 and Mrs B and the Lender.

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

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

The PR says, for instance, that the right checks weren't carried out before the Lender lent to Mr and Mrs B. And in replying to my PD, the PR implied the purchase had been unaffordable for Mr and Mrs B. However, I haven't seen anything meaningful to persuade me this was the case in this complaint given its circumstances. 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 and Mrs B was actually unaffordable before also concluding that they lost out as a result and then consider whether the credit relationship with the Lender was unfair for this reason. From the very limited and generic information provided by the PR, I am not satisfied that the lending in respect of the 2019 purchase was unaffordable for Mr and Mrs B, not least because their own testimony doesn't contain any specific details or evidence to support, what is effectively, the 'bare bones' of an unaffordability allegation.

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. However, it looks to me like Mr and Mrs B knew, amongst other things, how much they were borrowing and repaying each month, who they were borrowing from and that they were borrowing money to pay for Fractional Club membership. And as the lending doesn't look like it was unaffordable for them, even if the Credit Agreement was arranged by a broker that didn't have the necessary permission to do so, I can't see why that led to them suffering a financial loss – such that I can say that the credit relationship in question was unfair as a result.

Mr and Mrs B also allege that they were subjected to oppressive sales pressure at the point-of-sale meeting on 10 September 2019. However, we know that Mr and Mrs B had first attended a type of sales seminar in the UK in 2018 where they were invited to buy a type of trial timeshare membership. Ultimately, they declined to make a purchase on this occasion, but they were offered a free holiday voucher which they activated to take in Tenerife, in November 2018. A condition of that holiday voucher was that they must attend another sales seminar whilst at the resort; and it was at this November 2018 sales event they made a first Fractional membership purchase. This first purchase isn't the focus of *this* complaint as it involves another Lender.

But the point I'm making here is that I think it's relevant that Mr and Mrs B attended the sales event they are now complaining about – in September 2019 - against this backdrop. So,

firstly, they had previous experience of the UK-based seminar in early 2018[1] and this does tend to show that Mr and Mrs B were confident enough to *decline* to buy into something which they considered at the time to be not quite right for their situation. Next, they went to the November 2018 event with the knowledge that attending what was obviously a sales event was a mandatory part of the free holiday they had accepted.

So, by the time of their attendance at what was effectively their third event – in Tenerife in September 2019 – I think they would have had an increased level of experience and knowledge of what to expect and of course, they'd already made a timeshare purchase. Because of this, I do find the allegation of pressure as of 2019 to be unpersuasive.

Nevertheless, I do still acknowledge what Mr and Mrs B have to say about this 2019 sales event in their own client personal statement: their summary implies that they were subjected to some sales pressure. I acknowledge also, that it's possible Mr and Mrs B may have felt weary after a sales process which they imply may have gone on for a long time, for example. But whilst I do understand what they describe, they still attended this meeting as existing Fractional members and with the experience I've set out above. More so, they say relatively little about what was actually said or done by the Supplier during the sales presentation which made them apparently feel as if they had *no choice* but to purchase this further Fractional Club membership, when they simply didn't want to. They were also given a 14-day cooling off period and they have not provided a credible explanation for why they did not cancel their membership during that time.

So, with all of that being the case, I think there is insufficient evidence to demonstrate that they made the decision to purchase the second Fractional Club membership, in 2019, because their ability to exercise that choice was significantly and seriously impaired by pressure from the Supplier. I don't think the circumstances and evidence support this.

It was also said in the PR's Letter of Complaint that Mr and Mrs B *"have been unable to access the holidays that they were led to believe the timeshare contract would entitle them to".* But again, I've noted that Mr and Mrs B make no comments at all about this in their own client personal statement which was added to their complaint. So, it's not clear to me where this allegation about such problems comes from and I haven't seen any other evidence submitted to support it.

Overall, therefore, I don't think that Mr and Mrs B's credit relationship with the Lender was rendered unfair to them 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 to them. And that's the suggestion that Fractional Club membership was marketed and sold to them 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

[1] The trial membership which they considered but ultimately decline to buy.

The Lender does not dispute, and I am satisfied, that Mr and Mrs B'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 B 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 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 B 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 B 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.

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.

I am familiar with the sales process and documentation likely used by the Supplier at that time. 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 and Mrs B, 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 and Mrs B 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 and Mrs B 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 and Mrs B and the Lender that was unfair and warranted relief as a result, then whether the Supplier's breach of Regulation 14(3) led them 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 B's client personal statement and thought carefully about what they themselves have 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 evidence of their being investment related marketing carried out by the Supplier during the sale is concerned, the PR says, *"my client was told that they had purchased an investment and that this would considerably appreciate in value".* The PR also says Mr and Mrs B were told, they would get a *"considerable return on* [the] *investment".*

However, there was also no further or descriptive detail underpinning these allegations within the Letter of Complaint setting out exactly what was said and by whom. And importantly, I think I should draw attention to Mr and Mrs B's own statement as I think there are some meaningful differences between that statement and the PR's Letter of Complaint.

I say this because there are, for example, several specific allegations raised by the PR which are not reflected at all in what Mr and Mrs B have to say in their own statement. The most prominent anomaly is that Mr and Mrs B themselves make no comments at all about the alleged marketing of the 2019 sale as being an investment that *"would considerably appreciate in value"* which I find odd if that really was why they bought the timeshare. The comments in their statement focus on the sales techniques allegedly being designed to get them to sign up 'on the day' – the issue I've already dealt with above.

What they do refer to in their statement in this regard relates to the 2018 sale which was as follows: "… *it was also stated that at the end of the agreement that* [the Supplier] *would manage the sale of the property and that* [Mr and Mrs B] *would receive 1.9% of the sale value (apparently around £4,000) but again this was only mentioned in passing and none of the details of the potential sale were given.* …". I think it's reasonable to point out therefore that, on this 2018 occasion, the amount they recall they could receive at the end of the term was actually significantly less than they would have paid for the membership. On that basis it seems to me an expectation of a profit was not present in their thinking. Mrs and Mrs B have essentially not commented to say their understanding about this area had changed when recalling their Purchase number 2 (in 2019).

I also return briefly to the circumstances that brought them to attending this 2019 sales event which shows they were existing Fractional Club members buying more points. They also refer to enhanced accommodation standards (whether or not these actually existed). So, given all the information and evidence I've seen, I think it's much more likely Mr and Mrs B were more influenced by these promised extensions and enhancements to their holidaying experience and enjoyment, rather than any investment related matters. I accept the product they agreed to buy in 2019 probably had very similar features to the Fractional Club product Mr and Mrs B already owned and which they purchased the year before. However, we know they were increasing their number of holiday points, and I think their testimony shows they were much more persuaded by the prospect of additional holiday benefits and upgrading the accommodation, rather than anything else.

In their statement, for example, Mr and Mrs B say this about the 2019 purchase: *"this time* [the Supplier] *talked about upgrading the package that you already have to a more exclusive accommodation; we were taken and shown various other upgraded apartments"*. In my view, this demonstrates the likely dialogue the parties had at the point of sale, with Mr and Mrs B talking with the sales agent about the upgrade offer, which appeared to benefit from a higher standard of accommodation. So, I think the evidence is persuasive here that Mr and Mrs B recognised the potential superiority of what they were upgrading to compared with their existing membership.

My view in this is helped by the contemporaneous notes recorded at the time of the sale. These speak to Mr and Mrs B's desire to *"upgrade to get more pts* [points] *and benefits*", with an expectation of greater flexibility and various added holidaying benefits in mind.

Weighing all this up, and in the specific circumstances of this particular case, I do not think the prospect of a financial gain from the September 2019 Fractional Club membership was an important and motivating factor when Mr and Mrs B decided to go ahead with their purchase. Whilst Mr and Mrs B do refer to the percentage Fraction they were buying when entering into both memberships, in my view this only shows that they understood the concept of the Fractional memberships they were entering into. Their statement doesn't actually refer to any issues relating to investing for gain. Overall, I think there's much more persuasive evidence that their purchasing rationale lay elsewhere, supported as this is by various other comments in their own statement and a lack of any meaningful allegation that investment related marketing was something they factored into their purchasing calculations.

This 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 I'm afraid Mr and Mrs B don't persuade me that their purchase was motivated by their share in the Allocated Property and the possibility of a profit. So, I don't think a breach of Regulation 14(3) by the Supplier was likely to have been material to the decision Mr and Mrs B ultimately made.

As I said earlier, whether or not there was a breach of the relevant prohibition by the Supplier is not ultimately determinative of the outcome in this complaint. That's because everything I've comprehensively explained above leads me to think the evidence shows it's much more likely that Mr and Mrs B would have still gone ahead with this purchase, whether or not it had been presented to them as an investment opportunity in breach of Regulation 14(3) of the Timeshare Regulations.

So, I am not persuaded that their decision to purchase Fractional Club membership was motivated here by the prospect of a financial gain (i.e., a profit) which in this case was in 2037. I don't think the evidence supports this. I think the evidence is more persuasive in this

case that they would have pressed ahead with their purchase whether or not there had been a breach of Regulation 14(3).

On this basis, I therefore don't think the credit relationship between Mr and Mrs B and First Holiday Finance Limited was unfair.

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

Mr and Mrs B say they were not given sufficient information at the Time of Sale by the Supplier about some of 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 and Mrs B 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 and Mrs B 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 once again raised an affordability issue in what I think are somewhat vague terms. As I said before, these were no more than the 'bare bones' of such an allegation and I think that if this really had been the significant issue the PR now implies, then Mr and Mrs B would have referred to the circumstances in some detail and they would have given practical examples of why their purchase / credit was unaffordable. They haven't – and the evidence I've seen of their two timeshare purchases, the costs, and their ultimate repayments don't lend support to this allegation.

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 objects to the approach I've taken in assessing this aspect of the complaint, 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 and Mrs B 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 and Mrs

[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').

B were 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 they would, on balance, have pressed ahead with the purchase of the membership even if there had been a breach of Regulation 14(3). So, for the reasons I have already set out, I still do not think that any breach of Regulation 14(3), if indeed there was one, was material to Mr and Mrs B's decision to purchase the Fractional Club membership.

I will also address the PR's new point regarding an apparent ambiguity in the proposed sale date of the Allocated Property. The PR says the duration of the purchase contract is only 18 years, yet is also stated as being 19 years in other documents. The PR suggests that a delayed sale date could lead to an unfairness to Mr and Mrs B in the future, as any delay could mean a delay in the realisation of their share in the Allocated Property.

However, it does appear that the proposed date for the commencement of the sales process, as set out on the owners' certificate, is listed as December 2037. And I have seen a great many of these types of sales in an identical format, and am satisfied this same date was likely set out under *Point 1 of the Members Declaration.* In my view, this isn't a significant issue, and I can't agree that this is a reason to find the credit relationship unfair. This matter is, in my view, reflective of the fact that most fractional memberships were set up to run for 19 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 slightly less than 19 years at the actual time of sale. I accept that this could be confusing, however I do not think Mr and Mrs B were misled by this at the Time of Sale.

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 and Mrs B 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.

In stark contrast to the facts of Mr Johnson's case, as I understand it, no payment between the Lender and the Supplier, such as a commission, was payable when the Credit Agreement was arranged at the Time of Sale in Mr and Mrs B's situation. With that being the case, even if there were information failings at that time and regulatory failings as a result (which I make no formal finding on), I'm not persuaded that the commercial 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 and Mrs B.

Overall, therefore, I'm not persuaded that a commission arrangement between the Supplier and the Lender rendered the credit relationship unfair.

Conclusion

I am very sorry to disappoint Mr and Mrs B. But for the reasons 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 am not persuaded that the Lender was party to a credit relationship with them under the Credit Agreement which 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 them.

My final decision

I do not uphold this complaint against First Holiday Finance Limited.

I do not intend to ask First Holiday Finance Limited to do anything more.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B and Mrs B to accept or reject my decision before 10 February 2026.

Michael Campbell
Ombudsman