DRN-5183014

The complaint

Miss S and Mr Y'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 'Signature Collection' membership. This was purchased on 7 August 2019 with both Miss S and Mr Y's names on the Credit Agreement and they used a loan to help fund their purchase.

However, as I'll explain more about later, Miss S and Mr Y have also raised a complaint about an existing timeshare which they'd bought in 2018 and which they still had membership of just before they made their 2019 purchase. But as a colleague ombudsman has already issued a decision about that matter, I won't be dealing with that complaint here. I will, however, periodically refer to this earlier 2018 purchase where relevant.

For the 2019 Signature Collection purchase Miss S and Mr Y borrowed £10,639 from the new Lender, First Holiday Finance Limited. This was payable over 144 months with interest, meaning the total amount to be paid over the term was £21,833.

Their 2019 Signature Collection 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. Miss S and Mr Y bought 1,420 points on this occasion. However, the Signature Collection membership was also asset backed, which meant it gave Miss S and Mr Y more than just holidaying rights. It included exclusive rights to reserve a weekly period in one of the Supplier's suites and 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 2034.

Miss S and Mr Y used a professional representative (the 'PR') which wrote to the Lender on 25 March 2024 (the 'Letter of Complaint') to raise a number of different concerns.

The Lender rejected the complaint on every ground. It explained that Miss S and Mr Y had upgraded from a timeshare product they already owned, and the documentation and wider circumstances showed that this was because they wanted additional holiday points and the wider benefits the Signature Collection brought over their existing membership.

Miss S and Mr Y weren't satisfied with the Supplier's response and so the complaint was referred to the Financial Ombudsman Service which is why it was passed to me.

I issued a provisional decision (PD) about this case on 28 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 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 Miss S and Mr Y. In fact, there was no commission paid in relation to this case.

I've had a response from Miss S and Mr Y's PR which basically disagrees with my PD. I have read everything said on their behalf with great care. 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 Signature Collection membership had been misrepresented by the Supplier at the Time of Sale because Miss S and Mr Y 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 membership was misrepresented at the Time of Sale for this reason, I don't think it's probable. The complaint gives little to none of the colour or context necessary to demonstrating that the Supplier made a false statement of existing fact and/or opinion. And as there isn't any other evidence on file to support the suggestion that membership was misrepresented for that reason, I don't think it was.

So, while I recognise that Miss S and Mr Y and the PR have concerns about the way in which 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 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 Signature Collection 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 Miss S and Mr Y 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 Miss S and Mr Y and the Lender.

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

Miss S and Mr Y'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 Miss S and Mr Y. I haven't seen anything meaningful to persuade me this 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 Miss S and Mr Y 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. However, from the lack of information provided in this respect, I am not satisfied that the lending was unaffordable for Miss S and Mr Y.

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 Miss S and Mr Y 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 Signature Collection membership. 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 (which I make no formal finding on), 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.

Miss S and Mr Y's PR also alleges that they were subjected to oppressive sales pressure at the point-of-sale meeting on 7 August 2019 in Malaga, Spain. I've noted this allegation is identical in every respect to one made in the complaint brought about the first sale which took place in another location in 2018. I find it implausible that the description of events in both instances should be exactly the same given that they were at different times, different locations, and most likely with different sales agents. However, in any event, the PR hasn't followed through on this allegation by explaining or describing exactly what happened and why this apparently meant that they had no choice about buying the membership.

I think it's relevant that Miss S and Mr Y attended the 2019 sales event against the backdrop of what they themselves say was a very similar sales event the year before. As such, I do think it's fair and reasonable to have expected Miss S and Mr Y to have attended the later event in the full knowledge of what it was about and what to expect. I therefore think the allegation of pressure, with this in mind, is unpersuasive.

Nevertheless, I do still acknowledge what Miss S and Mr Y 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. But I don't think in their own client personal statement Miss S and Mr Y add any weight to their PR's generic allegation of the 2019 meeting being oppressive. As I say, they attended this meeting as existing Fractional timeshare members and with the knowledge and experience I've set out above. They also 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 Signature Collection membership, when they simply didn't want to.

I've also noted that Miss S and Mr Y say they were not given a 14-day cooling off period. I accept that this might be their genuine recollection now, however their complaint was raised four-and-a-half years after the 2019 sale and the documents I've seen show it's much more likely that at the time they were made aware of their right of withdrawal within that period; I have seen contemporary sales documentation to this effect. The relevant purchase agreement on file which contains the withdrawal rights has also now been supplied to Miss S and Mr Y via their PR. But I also note that in August *2018* Miss S and Mr Y had also signed a 14-day cooling off form too, in relation to their earlier timeshare purchase. So, I'm afraid I can't accept what they say about this. They have not provided any credible explanations for why they did not cancel their membership(s) during those time periods.

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 (Signature Collection) membership, in 2019, because their ability to exercise that choice was significantly and seriously impaired by pressure from the Supplier

It was also said in the PR's Letter of Complaint that Miss S and Mr Y *"have been unable to access the holidays that they were led to believe the timeshare contract would entitle them to".* But I've noted that Miss S and Mr Y make only limited comments about this in their own client personal statement. These are restricted to the carrying over of holiday points from the extended Covid-19 pandemic period, and comments about accommodation taken in the UK in 2022 which Miss S and Mr Y say didn't live up to their expectations. Although their disappointment is noted, the information provided does not, in my view, amount to sufficient grounds to uphold this aspect of the complaint. These concerns raised are limited in scope and lack the gravity and scale I would usually expect to see—such as specific examples of failed bookings, repeated issues in accessing holidays, or records of complaints made at the time. So, having viewed all the information we have about the sale with care, I think the point to make here is that the evidence doesn't show the Supplier acted unfairly, and it follows, that it does not merit the Lender compensating Miss S and Mr Y.

Overall, therefore, I don't think that Miss S and Mr Y'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 - that's the suggestion that Signature Collection membership was marketed and sold to them as an investment in breach of the 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 Miss S and Mr Y'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 that the Supplier did exactly that at the Time of Sale – saying, in summary, that Miss S and Mr Y were told by the Supplier that Signature Collection membership was the type of investment that would only increase in value. Allegations of this nature are contained both within the PR's Letter of Complaint.

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 Miss S and Mr Y 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 Signature Collection 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 Signature Collection. They just regulated how such products were marketed and sold.

To conclude, therefore, that this membership was marketed or sold to Miss S and Mr Y 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 Signature Collection 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 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.

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 Signature Collection as an ‘investment’ or quantifying to prospective purchasers, such as Miss S and Mr Y, 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 Signature Collection membership as an investment. So, I accept that it’s also possible that Signature Collection membership was marketed and sold to Miss S and Mr Y 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 Miss S and Mr Y 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 Miss S and Mr Y 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 Miss S and Mr Y'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, *"they were told that they had purchased an investment and that this would considerably appreciate in value".* The PR also says that Miss S and Mr Y 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. Importantly, I think I should draw attention to Miss S and Mr Y'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 Miss S and Mr Y have to say in their own statement. The most prominent example is that Miss S and Mr Y make no comments at all about the alleged marketing of the 2019 sale as being an investment that *"would considerably appreciate in value".* 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.

I also return briefly to the circumstances that brought them to attending this 2019 sales event. This shows they were already existing Fractional Club members, *upgrading*, and given all the information and evidence I've seen in this complaint, I think it's highly likely Miss S and Mr Y were much more influenced by the promised enhancements to their holidaying experience and enjoyment, rather than any investment related matters. The upgraded product they agreed to buy in 2019 was the Signature Collection membership and although it was similar in some ways to its previous Fractional Club offering they already held, it differed in that a higher standard of accommodation was promised and had the exclusive use of the Allocated Property - and Miss S and Mr Y were also increasing their number of holiday points and thus, entitlements.

More so, in my view, their witness statement makes no real suggestion of a decision to purchase the new membership that was based on, or motivated by, the prospect of a profit or financial gain. Rather, their recollections appear to focus upon the accommodation quality, the resort facilities, and value for money. Also, that Miss S and Mr Y said in their statement - *"we finally agreed to upgrade membership thinking we would be able to take the holidays we wanted to the countries we wanted to visit and thinking the* [extra] *points we had would allow us to achieve this"* – speaks to their purchasing rationale.

So, what I've seen in this complaint points diectly to Miss S and Mr Y being substantially encouraged and motivated by the upgraded holidaying offer(s) and the additional holiday points provided when they purchased the upgraded Signature Collection membership, rather than a search for, or desire for, a long-term investment profit realisable in 2034.

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 Signature Collection membership was an important and motivating factor when Miss S and Mr Y decided to go ahead with their purchase. 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 experienced, or factored into their purchasing calculations.

Of course, 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 Miss S and Mr Y 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 Miss S and Mr Y ultimately made. 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 don't think that the credit relationship between Miss S and Mr Y and First Holiday Finance Limited was unfair.

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

Miss S and Mr Y say they were not given sufficient information at the Time of Sale by the Supplier about some of the ongoing costs of Signature Collection 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 Miss S and Mr Y sufficient information, in good time, on the various charges they could have been subject to as Signature Collection 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 Miss S and Mr Y in practice, nor that any such terms led them to behave in a certain way to their detriment. With that being the case, I'm not persuaded that any of the terms governing the Signature Collection 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 Miss S and Mr Y 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 Miss S and Mr Y to provide some evidence for the claim they are making, 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*[1] and the case law that contributed to it, by requiring Miss S and Mr Y 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, Miss S and Mr Y 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 Miss S and Mr Y's decision to purchase this membership. The evidence is persuasive that they would have made the purchase, nonetheless.

I will also address the PR's new point regarding an apparent ambiguity in the proposed sale date of the Allocated Property. I have noted that the PR has been raising this issue in its PD replies to all the similar timeshare complaints I've seen so far. As we've been replying in the same fashion each time, I'm assuming the PR now understands the approach I intend to take, even though I accept it probably doesn't agree. But for Miss S and Mr Y's information, this matter relates to the way the membership certificate indicates that the Allocated Property will be sold in 15 years (in this case), however, the Information Statement provided at the time of sales suggests the property will be retained until the automatic sale date in 19 years.

But I have now seen a great many of these types of sales in an identical format and am satisfied this same (earlier) date was likely set out under the Members Declaration. In any event, I don't consider this to be an issue of significance for the outcome of this complaint, and I can't agree that it is a reason to find the credit relationship unfair. This matter is, in my view, reflective of the fact that most such 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 less than 19 years at the actual time of sale. I accept that if looked at through a certain lens this could be confusing, however I do not think Miss S and Mr Y were misled in their case, as I've explained above.

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:

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[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').

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 Miss S and Mr Y 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 Miss S and Mr Y'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. 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 have to disappoint Miss S and Mr Y. 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 am not persuaded that the Lender was party to a credit relationship with Miss S and Mr Y under the Credit Agreement 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 them.

My final decision

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

I do not direct First Holiday Finance Limited to do anything more.

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

Michael Campbell
Ombudsman