DRN-5612979

The complaint

Mr M's complaint is, in essence, that Lowell Portfolio I Ltd (the 'Assignee') acted unfairly and unreasonably by being party to an unfair credit relationship with him under Section 140A of the Consumer Credit Act 1974 (as amended) (the 'CCA').

What happened

Mr and Mrs M purchased membership of a timeshare (the 'Fractional Club') from a timeshare provider (the 'Supplier') on 8 June 2015 (the 'Time of Sale'). They entered into an agreement with the Supplier to buy 1,200 fractional points at a cost of £11,521 (the 'Purchase Agreement').

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

Mr and Mrs M paid for their Fractional Club membership by taking finance of £11,521 from a finance provider (the 'Lender') in Mr M's name (the 'Credit Agreement'). As the finance used for the purchase was in Mr M's sole name, only he is eligible to bring this complaint. Hereafter, I shall primarily refer to Mr M.

On 28 February 2016, Mr M complained directly to the Lender (the 'First Complaint). He alleged that at the Time of Sale, he was pressured into the purchase, and the availability of holidays was misrepresented. He explained that he was anticipating financial difficulties due to a change in circumstances and asked the Lender to rescind the Credit Agreement.

In June 2016, the First Complaint was considered by an Ombudsman at this service. They found that there was not enough evidence to conclude that Mr M was pressured into the purchase, and the Lender did not act unfairly or unreasonably when it rejected his Section 75 claim about the Supplier's alleged misrepresentations. They also found that the Lender was not required to rescind the Credit Agreement as Mr M did not request to cancel it within the cooling-off period.

In September 2017, Mr M's loan was sold and assigned to the Assignee.

On 22 June 2022, Mr M – using a professional representative (the 'PR') – wrote to the Lender (the 'Second Complaint') to raise a number of different concerns. As those concerns haven't changed since they were first raised, and as both sides are familiar with them, it isn't necessary to repeat them in detail here beyond the summary above.

The Second Complaint was considered by this service. We notified the parties that as the loan had been assigned to the Assignee, it was responsible for Mr M's concerns about an unfair credit relationship.

One of our Investigators then considered Mr M's complaint against the Assignee about an unfair credit relationship. Having considered the information on file, they rejected the

complaint on its merits.

Mr M disagreed with the Investigator's assessment and asked for an Ombudsman's decision – which is why the Second Complaint was passed to me.

I considered the matter and issued a provisional decision (the 'PD') dated 12 February 2026. In that decision, I said:

> "I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. And having done that, I do not currently think this complaint should be upheld.
>
> However, before I explain why, I want to make it clear that my role as an Ombudsman is not to address every single point that has been made to date. Instead, it is to decide what is fair and reasonable in the circumstances of this complaint. So, if I have not commented on, or referred to, something that either party has said, that does not mean I have not considered it.
>
> **The complaint I can consider against the Assignee**
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> I am only able to consider Mr M's complaint about an unfair credit relationship under Section 140A against the Assignee. That's because a specific Section 140A liability exists where "rights and duties under the agreement have passed by assignment", as per Section 140C.
>
> Mr M's concerns about the Supplier's misrepresentations, pressure during the sales process and irresponsible lending have already been considered against the Lender. So, I will not be considering them again.
>
> I am unable to consider Mr M's freestanding complaints about the commission arrangements at the Time of Sale and the implications of the Supplier's alleged breach of Spanish Law against the Assignee.
>
> **Section 140A of the CCA: did the Assignee participate in an unfair credit relationship?**
>
> Having considered the entirety of the credit relationship between Mr M and the Assignee along with all the circumstances of the complaint, I don't think the credit relationship between them was likely to have been rendered unfair for the purposes of Section 140A. 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 in relation to Fractional Club membership, 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
> 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 M and the Assignee given his circumstances at the Time of Sale.

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

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

The PR says, for instance, that the Credit Agreement was arranged by an unauthorised credit broker, the upshot of which is to suggest that the Assignee wasn't permitted to enforce the Credit Agreement. However, it looks to me like Mr M knew, amongst other things, how much he was borrowing and repaying each month, who he was borrowing from and that he was borrowing money to pay for Fractional Club membership. And as the lending doesn't look like it was unaffordable for him, 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 Mr M experiencing a financial loss – such that I can say that the credit relationship in question was unfair on him as a result. And with that being the case, I'm not persuaded that it would be fair or reasonable to tell the Assignee to compensate him, even if the loan wasn't arranged properly.

The PR also says that there were one or more unfair contract terms in the Purchase Agreement. But as I can't see that any such terms were operated unfairly against Mr M in practice, nor that any such terms led him to behave in a certain way to his detriment, 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.

Overall, therefore, I don't think that Mr M's credit relationship with the Assignee was rendered unfair to him 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 Assignee was unfair to him. And that's the suggestion that Fractional Club membership was marketed and sold to him as an investment in breach of a prohibition against selling timeshares in that way.

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

A share in the Allocated Property clearly constituted an investment as it offered Mr M the prospect of a financial return – whether or not, like all investments, that was more than what he first put into it. But it's 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 Club membership was marketed or sold to Mr M 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 to him as an investment, i.e. told him or led him to believe that Fractional Club membership offered him 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.

On the one hand, it's 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 M, the financial value of their share in the net sales proceeds of their allocated property along with the investment considerations, risks and rewards attached to it.

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 also possible that Fractional Club membership was marketed and sold to Mr M 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.

Would the credit relationship between the Assignee and Mr M have been rendered unfair to him had there been a breach of Regulation 14(3) of the Timeshare Regulations?

Having found 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 had on the fairness of the credit relationship between Mr M and the Assignee 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 M and the Assignee that was unfair to him and warranted relief as a result, 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.

But on my reading of the evidence before me, the prospect of a financial gain from Fractional Club membership was not an important and motivating factor when he decided to go ahead with his purchase.

Following an Investigator's view that the Second Complaint should not be upheld, the PR provided a statement from Mr and Mrs M on 10 May 2024 containing their recollections of their interactions with the Supplier. Amongst other things, this says:

> "We was told we would have a fraction of the apartment and that if we rented it we would get money. He also said if it was sold we would get our money back. It was sold as a home also a valuable asset which seemed [to] be a great deal. They said if we wanted we could sell it early to get a profit from it."

But these comments are not in keeping with the First Complaint, which was made directly by Mr M on 28 February 2016, and contains little to no mention of the

investment element of Fractional Club membership. Rather, this says:

> "When the Agent [of the Supplier] dealt with us at the time it was to offer a chance of a lifetime to see different parts of the world without paying a lot. We thought to ourselves this is great […]
>
> Finally we agreed to sign the paperwork [with another Supplier representative] but not without asking more questions first. We became members and have a fraction of an apartment around the world for our holidays whenever we want unless it[']s out of season […]
>
> We thought that as members of [the Supplier] we would have the right to choose a holiday anywhere in the world by using points or not when we want and where we wanted […]"

The First Complaint does not say, or indeed suggest, that the motivation for Mr M's purchase at the Time of Sale was the investment element of Fractional Club membership. Instead, it seems that it was the holiday benefits that were the motivation. In fact, much of Mr and Mrs M's dissatisfaction with membership in the First Complaint stems from the availability and value of holidays not being as they say they were led to believe.

All things considered, I am satisfied the contents of the First Complaint are stronger evidence of Mr M's motivation at the Time of Sale. The First Complaint was written around nine months after the Time of Sale, whereas Mr and Mrs M's statement was provided over nine years later. The First Complaint also came directly from Mr and Mrs M rather than through a third party. Further, their statement was provided after the judgment in *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*') was handed down, so there is a real risk it was coloured by the findings in that case.

That doesn't mean Mr M wasn'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 he and Mrs M don't persuade me that his purchase was motivated by his 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 he ultimately made.

On balance, therefore, even if the Supplier had marketed or sold the Fractional Club membership as an investment in breach of Regulation 14(3) of the Timeshare Regulations, I am not persuaded that Mr M's decision to purchase this at the Time of Sale was motivated by the prospect of a financial gain (i.e. a profit). On the contrary, I think the evidence suggests he would have pressed ahead with his purchase whether or not there had been a breach of Regulation 14(3). And for that reason, I do not think the credit relationship between Mr M and the Assignee was unfair to him even if the Supplier had breached Regulation 14(3).

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

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

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

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

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

1. The size of the commission (as a percentage of the total charge for credit). In Mr Johnson's case it was 55%. This was "so high" and "a powerful indication that the relationship […] was unfair" (see paragraph 327);
2. The failure to disclose the commission; and
3. The concealment of the commercial tie between the car dealer and the lender.

The Supreme Court also confirmed that the following factors, in what was a non-exhaustive list, 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 FCA's Dispute Resolution rules ('DISP').

But I don't think *Hopcraft, Johnson and Wrench* assists Mr M in arguing that his credit relationship with the Assignee is unfair to him 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 M, nor have I seen anything that persuades me that the commission arrangement between them gave the Supplier a choice over the interest rate that led him into a credit agreement that cost disproportionately more than it otherwise could have.

I acknowledge that it's possible that 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 between them.

But as I've said before, 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. And with that being the case, it isn't necessary to make a formal finding on that because, even if the Lender and the Supplier failed to follow the relevant regulatory guidance at the Time of Sale, it's for the reasons set out below that I don't think any such failure is itself a reason to find the credit relationship in question unfair to Mr M.

In stark contrast to the facts of Mr Johnson's case, the amount of commission paid by the Lender to the Supplier for arranging the Credit Agreement that Mr M entered into wasn't high. At £104.84, it was only 0.91% of the amount borrowed and even less than that (0.84%) as a proportion of the charge for credit. So, had Mr M known at the Time of Sale that the Supplier was going to be paid a flat rate of commission at that 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 M wanted Fractional Club membership and had no obvious means of his own to pay for it. And at such a low level, the impact of commission on the cost of the credit he needed for a timeshare he wanted doesn't strike me as disproportionate. So, I think he would still have taken out the loan to fund his purchase at the Time of Sale had the amount of commission been disclosed.

What's more, based on what I've seen so far, the Supplier's role as a credit broker wasn't a separate service and distinct from its role as the seller of timeshares. It was simply a means to an end in the Supplier's overall pursuit of a successful timeshare sale. I can't see that the Supplier gave an undertaking – either expressly or impliedly – to put to one side its commercial interests in pursuit of that goal when arranging the Credit Agreement. And as it wasn't acting as an agent of Mr M but as the supplier of contractual rights he obtained under the Purchase Agreement, the transaction doesn't strike me as one with features that suggest the Supplier had an obligation of 'loyalty' to him when arranging the Credit Agreement and thus a fiduciary duty.

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 M."

In conclusion, given the facts and circumstances of this complaint, I was not persuaded that the Assignee was party to a credit relationship with Mr M under the Credit Agreement that was unfair to him for the purposes of Section 140A of the CCA. And having taken everything into account, I could see no other reason why it would be fair or reasonable to direct the Assignee to compensate him.

The PR responded that it did not accept the PD and provided some further comments and evidence to be considered. The Assignee accepted the PD and had no further comments.

I am now in a position to finalise my decision.

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.

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

Again, my role as an Ombudsman isn't to address every single point which has been made to date, but to decide what is fair and reasonable in the circumstances of this complaint. If I haven't commented on, or referred to, something that either party has said, this doesn't mean I haven't considered it.

Rather, I've focused here on addressing what I consider to be the key issues in deciding this complaint and explaining the reasons for reaching my final decision.

The PR's further comments in response to the PD largely relate to the issue of whether the credit relationship between Mr M and the Assignee was unfair. In particular, the PR has provided further comments to support its arguments that Fractional Club membership was sold as an investment and the payment of commission led to an unfair credit relationship. It's also now argued for the first time that a contradiction in the purchasing documentation led to an unfair credit relationship.

The PR also said there was no comment in the PD on the Supplier's alleged breach of Spanish law. I refer the PR to the section of the PD which sets out the complaint I am able to consider against the Assignee.

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

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

In my PD, I explained in detail why I was more persuaded by the contents of the First Complaint than the recent statement by Mr and Mrs M. The PR has not responded to this crucial point.

And having carefully considered the PR's response, I remain unpersuaded that the investment element of Fractional Club membership was the motivation for Mr M's purchase at the Time of Sale.

The PR says that as the Supplier's pricing sheet refer to the "Unit Share %" provided under Mr M's Fractional Club membership, this shows the investment element was an "important part" of the sales process and "played quite an important role" in his purchasing decision. But I don't agree. As I explained in my PD, it is not in dispute that Fractional Club membership contained an investment element and it's possible that it was marketed or sold to Mr M as an investment (although I have made no finding on this). However, the simple fact that his share in the Allocated Property was recorded on the pricing sheet does not offer an insight into his motivation for his purchase.

The PR also says that in the judgment handed down in *Shawbrook & BPF v FOS*, it was not challenged that the product in question was marketed and sold as an investment. But, as I explained in my PD, the Timeshare Regulations did not ban products such as the Fractional Club. They just regulated how such products were marketed and sold. And the judgment referred to did not make a blanket finding that all such products were mis-sold in the way the PR appears to be suggesting. Any complaint needs to be considered in light of its specific circumstances.

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

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

In response to my findings on commission in my PD, the PR said that in *Hopcraft, Johnson and Wrench*, "the concern […] was not solely the quantum of the commission, but the lack of transparency and the misleading reality presented to the consumer." It argues that the partially disclosed commission prevented Mr M from making an informed decision and gave rise to an unfair credit relationship.

But as I've said, 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.

And as the amount of commission paid by the Lender to the Supplier was at such a low level, I still think Mr M would have taken out the loan to fund his purchase at the Time of Sale had the amount of commission been disclosed to him. So, I don't find the PR's response persuades me to depart from the conclusions I reached in my PD.

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 M in the future, as any delay could mean a delay in the realisation of his 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 31 December 2032. The same date will have been set out under point 1 of the Member's Declaration, which will have been initialled and signed as being read by Mr M. This date indicates that the membership has a term of 17 years from the first year of occupancy. The ambiguity identified by the PR is that in the Information Statement provided as part of the purchase documentation it says the following:

> "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]

It seems clear to me that the commencement date for the start of the sales process is 31 December 2032. This actual date is repeated in the sales documentation as I've set out above. So, I can't see that this is a reason to find the credit relationship unfair and uphold this complaint.

Conclusion

In conclusion, given the facts and circumstances of this complaint, I am not persuaded that the Assignee was party to a credit relationship with Mr M under the Credit Agreement that was unfair to him for the purposes of Section 140A of the CCA. And having taken everything into account, I see no other reason why it would be fair or reasonable to direct the Assignee to compensate him.

My final decision

My final decision is to not uphold Mr M's complaint about Lowell Portfolio I Ltd for the reasons provided.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 20 March 2026.

Alex Salton
Ombudsman