DRN-5730940

The complaint

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

What happened

I issued a provisional decision on Mr O's complaint on 18 July 2025, in which I set out the background to the case and my provisional findings on it. A copy of that provisional decision is appended to, and forms a part of, this final decision, so it's not necessary to go over the details again. However, in very brief summary:

- Mr O entered an agreement to buy a timeshare (the "Purchase Agreement") from a timeshare provider (the "Supplier") on 7 April 2016 (the "Time of Sale"), for £12,521. This was financed by a loan of the same amount from the Lender (the "Credit Agreement").

- The timeshare was a type of asset-backed timeshare which entitled Mr O to more than holiday rights. It also entitled him to a share in the proceeds of a property named on his purchase agreement (the "Allocated Property") after his contract came to an end.

- Mr O later complained, via a professional representative ("PR"), to the Lender about a number of concerns which included misrepresentations by the Supplier giving Mr O a claim against the Lender under Section 75 of the CCA, and matters giving rise to an unfair credit relationship between Mr O and the Lender.

- The Lender rejected the complaint and it was then referred to the Financial Ombudsman Service for an independent assessment.

In my provisional decision I said I didn't think the complaint should be upheld. Again, my full findings can be found in the appended provisional decision, but in very brief summary:

- The Lender had not been unfair or unreasonable in declining Mr O's Section 75 claim for misrepresentation because:

    - Some of the alleged misrepresentations were in fact true statements or statements of opinion which there was no evidence to demonstrate were not honestly held.

    - The remaining alleged misrepresentations were too vague and lacking in colour and context to be able to draw a positive conclusion that the Supplier had made false statements of specific fact to Mr O.

- The Lender had not participated in a credit relationship with Mr O that was unfair to him because:

- Regardless of whether the Lender had carried out appropriate checks before lending to Mr O, there was a lack of evidence the loan had been unaffordable for him at the time.

- Whether or not the credit broker which had arranged the Credit Agreement had held the proper regulatory permissions at the time, this didn't appear to have led to Mr O experiencing a financial loss. He had been aware of the relevant terms of the loan, and appeared able to afford it, so it wasn't fair or reasonable to conclude the credit relationship had been unfair to Mr O for that reason.

- While I noted there were terms within the Purchase Agreement that had the potential to be operated in an unfair way with respect to Mr O, I hadn't seen evidence that they had been operated in such a way in practice, or that Mr O had acted in a way which was to his detriment as a result of them.

- Mr O had said in his testimony that he had signed up for the purchase on the day because he'd felt under pressure, and that he'd not been given the paperwork to take away with him. However, I noted Mr O hadn't given much of a sense of what the Supplier had said or done to cause him to feel that way, and that he had signed in multiple places to acknowledge that he had a 14-day cooling off period in which to cancel. I thought, in light of these things, there was insufficient evidence to conclude he had entered the Purchase Agreement because his ability to exercise a choice had been significantly impaired by pressure from the Supplier.

- It was *possible* the Supplier had breached Regulation 14(3) of the Timeshare Regulations by marketing the timeshare to Mr O as an investment, but I was not persuaded by Mr O's testimony as to this issue. I thought that what Mr O had recalled did not really support a conclusion that he had purchased the timeshare because of any breach by the Supplier of Regulation 14(3). He said he had bought the timeshare because he'd been put under pressure to do so, not because he thought it was an investment.

I noted that the matter of an alleged commission payment by the Lender to the Supplier had been raised by PR, but that I didn't have enough information at that point in time to assess the impact of this on the fairness of the credit relationship. I said I would provide an update once I knew more.

I then invited the parties to the complaint to respond to my provisional decision. The Lender accepted the provisional decision, and added that no commission had been paid in Mr O's case. PR didn't agree with the provisional decision, and asked me to consider various additional points.

After further investigation into the matter of commission, I was able to confirm that no commission was paid by the Lender to the Supplier for arranging the Credit Agreement. I wrote to PR to explain this, and that I didn't think the commission arrangements had led to any unfairness in the credit relationship between Mr O and the Lender. PR did not provide any further submissions in response to that communication.

The case has now been returned to me to decide.

The legal and regulatory context

In considering what is fair and reasonable in all the circumstances of the complaint, I am required under DISP 3.6.4R to take into account: relevant (i) law and regulations; (ii) regulators' rules, guidance and standards; and (iii) codes of practice; and (where appropriate), what I consider to have been good industry practice at the relevant time.

The legal and regulatory context that I think is relevant to this complaint is, in many ways. no different to that shared in several hundred published ombudsman decisions on very similar complaints – which can be found on the Financial Ombudsman Service's website. And with that being the case, it is not necessary to set out that context in detail here. But I would add that the following regulatory rules/guidance are also relevant:

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 3.7.3R
- CONC 4.5.3R
- CONC 4.5.2G

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.

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

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.

PR's comments in response to the provisional decision relate only to the issue of whether the credit relationship between Mr O and the Lender was unfair. In particular, PR has provided further comments in relation to whether the membership was sold to Mr O as an investment at the Time of Sale, and what the impact of that was on his purchasing decision.

As outlined in my provisional decision, PR originally raised various other points of complaint, all of which I addressed at that time. But it didn't make any further comments in relation to those in its response to my provisional decision. Indeed, it hasn't said it disagrees with any of my provisional conclusions in relation to those other points. And since I haven't been provided with anything more in relation to those other points by either party, I see no reason

to change my conclusions in relation to them as set out in my provisional decision. So, I'll focus here on PR's points raised in response.

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

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

PR says it hadn't shared the Investigator's assessment on this complaint with Mr O, saying this was done in order not to influence his recollections. PR said Mr O was also unaware about the judgment handed down in *Shawbrook and BPF v FOS*[1]. PR said this means his recollections have not been influenced by either the Investigator's assessment or the judgment.

PR also says that it considers Mr O is being penalised for the way he has articulated himself in his witness statement. It says that the fact that the only benefit of the timeshare which is mentioned in Mr O's testimony, is evidence that this was important to his purchasing decision.

Having re-read Mr O's witness statement, which was produced after our Investigator's assessment and the widespread publication of the outcome of *Shawbrook & BPF v FOS*, I would observe that there is an absence of any mention of the timeshare being an investment. For its part, PR argues that this comes across in the following passage from the statement:

"At this point the sales rep informed us that the contract is until 31/12/2033. The sales rep informed both of us that we were buying the fractional property as a timeshare and at the end of the contract the fractional share will be sold and we will receive our fractional value of the property."

This appears to me to be a neutral description of how fractional timeshares work. There is no mention of any potential increase in the value of the Allocated Property, or that a financial gain or profit might result. If this is how the Supplier described the product, I'm not convinced that a breach of Regulation 14(3) occurred at all. PR has suggested that because the purchase involved an interest in property, there would have been an implicit, unvoiced hope or expectation on Mr O's behalf, that he would make a financial gain. But I think this attributes a state of mind to Mr O that really doesn't come across in his testimony, and it doesn't seem, in any case, that the Supplier is likely to have breached Regulation 14(3) of the Timeshare Regulations during this specific sale, based on the available evidence.

So, ultimately, for the above reasons, along with those I already explained in my provisional decision, I am unpersuaded that there was a breach of Regulation 14(3) or, if there was, that this was material to Mr O's purchasing decision. I appreciate PR considers Mr O is being penalised for the way he has articulated himself, but I can go only on the evidence I have.

The alleged payment of a commission by the Lender to the Supplier

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.

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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*').

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 Cort 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 Financial Conduct Authority's Dispute Resolution Rules ('DISP').

But I don't think *Hopcraft, Johnson and Wrench* assists Mr O in arguing that his credit relationship with the Lender was unfair to him for reasons relating to commission 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 O, 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 Mr O 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 is for the reasons set out below that I don't currently think any such failure is itself a reason to find the credit relationship in question unfair to Mr O.

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 O 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.

What's more, in stark contrast to the facts of Mr Johnson's case, as I understand it, the Lender didn't pay the Supplier any commission at the Time of Sale. And 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 currently 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 O.

My final decision

For the reasons explained above, and in the appended provisional decision, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O to accept or reject my decision before 16 February 2026.

Will Culley
Ombdusman

COPY OF PROVISIONAL DECISION

I've considered the relevant information about this complaint.

Having done so, I've arrived at broadly the same conclusions as our Investigator, and for much the same reasons. However, I have gone into some more detail and so I've decided to send a provisional decision to allow the parties to the complaint some further time to make additional submissions.

The deadline for both parties to provide any further comments or evidence for me to consider is 1 August 2025. Unless the information changes my mind, my final decision is likely to be along the following lines, subject to the implications of the judgment of the Supreme Court on the matter of commission.

The complaint

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

What happened

Mr O purchased membership of a timeshare (the 'Fractional Club') from a timeshare provider (the 'Supplier') on 7 April 2016 (the 'Time of Sale'). He entered into an agreement with the Supplier to buy 1,040 fractional points at a cost of £12,521 (the 'Purchase Agreement'). The points could be used every other year to book holiday accommodation within the Supplier's portfolio.

Fractional Club membership was also asset backed – which meant it gave Mr O 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 his membership term ends.

Mr O paid for his Fractional Club membership by taking finance of £12,521 from the Lender (the 'Credit Agreement').

Mr O – using a professional representative (the 'PR') – wrote to the Lender on 24 October 2021 (the 'Letter of 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 Lender dealt with Mr O's concerns as a complaint and issued its final response letter in December 2021, rejecting it on every ground.

The complaint was then referred to the Financial Ombudsman Service. It was assessed by an Investigator who, having considered the information on file, rejected the complaint on its merits.

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

The legal and regulatory context

In considering what is fair and reasonable in all the circumstances of the complaint, I am required under DISP 3.6.4R to take into account: relevant (i) law and regulations; (ii) regulators' rules, guidance and standards; and (iii) codes of practice; and (where appropriate), what I consider to have been good industry practice at the relevant time.

The legal and regulatory context that I think is relevant to this complaint is no different to that shared in several hundred ombudsman decisions on very similar complaints. And with that being the case, it is not necessary to set it out here.

What I've provisionally 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 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.

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 that affords consumers ("debtors") a right of recourse against lenders that provide the finance for the acquisition of goods or services from third-party merchants ("suppliers") in the event 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 O was:

1. Told that he had purchased an investment that would "considerably appreciate in value".
2. Promised a considerable return on his investment because he was told that he would own a share in a property that would considerably increase in value.
3. Told that he could sell his Fractional Club membership to the Supplier or easily to third parties at a profit.
4. Made to believe that he would have access to "the holiday apartment" at any time all year round.

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. And 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 any accompanying evidence to persuade me that the relevant sales representatives did not hold the opinions they professed to hold, or had no reasonable grounds to do so.

As for points 3 and 4, while it's *possible* that Fractional Club membership was misrepresented at the Time of Sale for one or both of those reasons, I don't think it's *probable*. There's none of the detail or context, either in PR's submissions or Mr O's own testimony, which would be necessary to demonstrate that the Supplier made false statements of existing fact. And as there isn't any other evidence on file to support the suggestion that Fractional Club membership was misrepresented for these reasons, I don't think it was.

So, while I recognise that Mr O - 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. And that 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 O 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; and
4. The inherent probabilities of the sale given its circumstances.

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

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

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

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

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 O knew, amongst other things, how much he was borrowing and repaying each month, who he was borrowing from and that he was borrowing money to pay for Fractional Club membership. So, 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 O incurring 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 Lender 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 O 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.

A point that comes across from Mr O's own testimony is that he felt pressured into buying the Fractional Club membership by the Supplier. I acknowledge that Mr O may have felt exhausted by a sales process that went on for a long time, and I'm aware that the Supplier's sales processes could be rather lengthy. But he says little about what was said and/or done by the Supplier during the sales presentation that made him feel as if he had *no choice* but to purchase Fractional Club membership when he simply did not want to. He was also given a 14-day cooling off period and he has not provided a credible explanation for why he did not cancel his membership during that time. Mr O has said that he wasn't given paperwork to take away with him, but I note he did sign two separate pages which informed him that he had a 14-day cooling off period to withdraw from the contract, so I think he must have been aware of it. And with all of that being the case, there is insufficient evidence to demonstrate that Mr O made the decision to purchase Fractional Club membership because his ability to exercise that choice was significantly impaired by pressure from the Supplier.

Overall, therefore, I don't think that Mr O's credit relationship with the Lender 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 Lender 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 prohibition against selling timeshares in that way.

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

The Lender does not dispute, and I am satisfied, that Mr O'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 O was told by the Supplier that Fractional Club membership was the type of investment that would only increase in value.

The term "investment" is not defined in the Timeshare Regulations. But for the purposes of this provisional decision, and by reference to the decided authorities, an investment is a transaction in which money or other property is laid out in the expectation or hope of financial gain or profit.

A share in the Allocated Property clearly constituted an investment as it offered Mr O the prospect of a financial return – whether or not, like all investments, that was more than what he 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 Club membership was marketed or sold to Mr O 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 is clear that the Supplier made efforts, through the use of disclaimers and declarations within the contractual paperwork, to avoid specifically describing membership of the Fractional Club as an 'investment' or quantifying to prospective purchasers, such as Mr O, the financial value of their 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 O as an investment in breach of Regulation 14(3), although I would observe that in his testimony he does not suggest that the Supplier did anything more than simply describe how the fractional element of the product worked.

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 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 O 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 O and the Lender 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 Mr O decided to go ahead with his purchase. He doesn't cite it as a reason for his purchase in his own evidence, in which he focuses primarily on the feeling of having been put under pressure to buy the product (which I don't think rendered the credit relationship between him and Lender unfair to him, for reasons I've already explained). That doesn't mean he 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 Mr O himself doesn'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 Mr O 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 O's decision to purchase Fractional Club membership at the Time of Sale was motivated by the prospect of a financial gain (i.e., a profit). And for that reason, I do not think the credit relationship between Mr O and the Lender was unfair to him even if the Supplier had breached Regulation 14(3).

Mr O's Commission Complaint

I note that one of Mr O's other concerns relates to alleged payments of commission by the Lender to the Supplier for acting as a credit broker and arranging the Credit Agreements. The Court of Appeal's recent judgment in *Johnson and Wrench -v- FirstRand Bank, and Hopcroft -v- Close Brothers* [2024] EWCA Civ 1282 ('*Johnson, Wrench and Hopcroft*') sought to clarify the law on secret and partially disclosed commission – albeit in the context of car dealers acting as credit brokers. In my view, the Court of Appeal's judgment sets out principles which appear capable of applying to credit brokers other than car dealer–credit brokers. But as it was recently appealed to the Supreme Court, whose judgment is still pending, I don't intend on finalising my thoughts on this complaint until it is handed down and its implications on this complaint, if there are any, considered.

Conclusion

In conclusion, as things currently stand, I do not think that the Lender acted unfairly or unreasonably when it dealt with the relevant Section 75 claim, and if I put the issue of commission to one side for the time being, I am not persuaded that the Lender was party to credit relationships with Mr O under the Credit Agreement that was unfair to them for the purposes of Section 140A of the CCA – nor do I see no other reason why it would be fair or reasonable to direct the Lender to compensate them.

But, as I've already suggested, the Supreme Court's pending judgment on *Johnson, Wrench and Hopcroft* may prove important to this complaint. And with that being the case, it is necessary to wait and consider the possible implications of that judgment before finalising my thoughts on the merits of this complaint.

My provisional decision

For the reasons explained above, I'm not presently minded to uphold this complaint. I'd ask that the parties provide any further submissions on issues not related to commission, by 1 August 2025.

Will Culley
Ombudsman