Financial Ombudsman Service

The complaint

Mr and Mrs B's complaint is, in essence, that Shawbrook Bank Limited (the 'Lender') acted unfairly and unreasonably by (1) deciding against paying claims under Section 75 of the Consumer Credit Act 1974 (as amended) (the 'CCA') and (2) being party to an unfair credit relationship with them under Section 140A of the CCA.

What happened

Mr and Mrs B purchased membership of a timeshare (the 'Fractional Club') from a timeshare provider (the 'Supplier') on 8 February 2015 (the 'Time of Sale'). They entered into an agreement with the Supplier to buy 1,010 fractional points at a cost of £21,435 (the 'Purchase Agreement'). But after trading in their existing trial timeshare membership ('Trial Membership'), they ended up paying £17,440 for membership of the Fractional Club.

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

Mr and Mrs B paid for their Fractional Club membership by taking finance of £21,160 from the Lender (the 'Credit Agreement'). This included £3,720 to pay off the loan taken (through another lender) to pay for their trial membership.

In 2019, Mr and Mrs B stopped paying their annual management fees and their Fractional Club membership was suspended.

Complaint to the Supplier

On 22 February 2019, Mr and Mrs B wrote to the Supplier – using a professional representative (the 'PR') – to say they intended to rescind the contract due to pre-contractual misrepresentations, including but not limited to Fractional Club membership:

1. Being a mechanism for property ownership.
2. Giving Mr and Mrs B a guaranteed exit from the contract at the end of the membership term, terminating all liabilities under it
3. Being an investment in breach of Regulation 14(3) of the Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010.
4. Provided exclusive access to the Supplier's resorts.

Mr and Mrs B also complained that they were not made aware that the meeting they attended was for the commercial purpose of attempting to sell to them, that they were pressured to enter into the contract and that the contract had no provision for them to cancel their membership, which was unfair.

Mr and Mrs B requested a refund of the purchase price and management fees plus interest, as well as their legal fees. The Supplier refused, and their membership remains suspended.

Complaint to the Lender

The PR wrote to the Lender on behalf of Mr and Mrs B on 3 September 2019 (the 'Letter of Complaint') to complain about:

1. Misrepresentations by the Supplier at the Time of Sale giving them a claim against the Lender under Section 75 of the CCA, which the Lender failed to accept and pay.

2. The Lender being party to an unfair credit relationship under the Credit Agreement and related Purchase Agreement for the purposes of Section 140A of the CCA.

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

Mr and Mrs B say that the Supplier made a number of pre-contractual misrepresentations at the Time of Sale – namely that the Supplier told them that:

1. Fractional Club membership would give them high quality holidays (always five-star accommodation) anytime and anywhere they wanted to travel to.

2. The Supplier's holiday resorts were exclusive to its members.

Mr and Mrs B say that they have a claim against the Supplier in respect of one or more of the misrepresentations set out above, and therefore, under Section 75 of the CCA, they have a like claim against the Lender, who, with the Supplier, is jointly and severally liable to Mr and Mrs B.

(2) Section 140A of the CCA: the Lender's participation in an unfair credit relationship

The Letter of Complaint set out several reasons why Mr and Mrs B say that the credit relationship between them and the Lender was unfair to them under Section 140A of the CCA. In summary, they include the following:

1. The Lender paid commission to the Supplier without getting Mr and Mrs B's informed consent.

2. The Supplier subjected Mr and Mrs B to a high-pressure sales presentation, which they were invited to without the Supplier making clear its commercial purpose, in breach of the Consumer Protection from Unfair Trading Regulations 2008 (the 'CPUT' Regulations).

3. The Supplier told Mr and Mrs B that the purchase was a special offer (and price) only available on the day – which is a commercially aggressive practice under the CPUT Regulations.

4. Mr and Mrs B were forced to take the loan because the Supplier refused to take payment any other way.

5. Mr and Mrs B were not given any time alone to consider the paperwork – so they felt rushed and pressured to sign the Purchase Agreement and Loan Agreement – which is in breach of Finance and Leasing Association (the 'FLA') Lending Code.

6. No proper affordability check was carried out, in breach of FLA Lending Code.

The Lender dealt with Mr and Mrs B's concerns as a complaint and issued its final response letter on 12 November 2019, rejecting it on every ground. Mr and Mrs B then referred the complaint to the Financial Ombudsman Service.

Our Investigator thought that the Supplier had marketed and sold Fractional Club membership as an investment to Mr and Mrs B at the Time of Sale in breach of Regulation 14(3) of the Timeshare Regulations. And given the impact of that breach on their purchasing decision, the Investigator concluded that the credit relationship between the Lender and Mr and Mrs B was rendered unfair to them for the purposes of section 140A of the CCA.

The Lender disagreed with the Investigator's assessment and asked for an Ombudsman's decision – which is why it was passed to me. Amongst other things the Lender said:

- The PR did not mention Fractional Club membership being sold or marketed as an investment in the Letter of Complaint.

- Mr and Mrs B's Client Statement, which included their recollections of what happened at the Time of Sale, is unsigned and undated, and very similar to claims made by other customers.

I issued a provisional decision explaining why I was not planning to uphold this complaint. I followed this up with an email setting out my provisional findings on Mr and Mrs B's complaint about commission paid by the Lender to the Supplier without them being aware of it.

The Lender agreed with my provisional decision and acknowledged my provisional findings on commission but provided nothing further for me to consider.

The PR responded to the provisional decision to say it had been unable to take instruction from Mr and Mrs B, and it acknowledged my provisional findings on commission. It provided nothing further for me to consider when reaching my final decision.

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. However, I think 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 3.7.3 [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 so and given there was nothing further for me to consider following my provisional decision and provisional findings on commission, I have decided not to uphold this complaint. Below are my reasons, which are the same as set out in my provisional findings.

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.

This part of the complaint was made for several reasons that I will discuss below.

1. Fractional Club membership would provide Mr and Mrs B with high quality holidays (always five-star accommodation) anytime and anywhere they wanted to travel to.

I find this allegation implausible. I do not doubt that the Supplier would've presented its resorts as providing high quality accommodation, perhaps even luxurious holidays. And that it would've explained the number of resorts that its members could access using their fractional points – including through affiliated exchange programs. But it seems highly unlikely the Supplier would've made the alleged representations, given the available resorts

would not all be considered five-star (and the Supplier itself says it did not use such designations for its own resorts), and that accommodation was subject to availability on a first-come first-served basis (which was explained in the sales documents). So, I am not persuaded this misrepresentation was made.

2. The Supplier's holiday resorts were exclusive to its members.

Again, I find it unlikely that the Supplier made this representation. Or that Mr and Mrs B would've believed it. They had after all purchased Trial Membership during a holiday at one of the Supplier's resorts when they were not themselves members.

It is likely that the Supplier would describe Fractional Club membership as providing some benefits that were exclusive to members. But that would not be a misrepresentation since members did have access to some benefits that non-members did not.

There's nothing else on file that persuades me there were any false statements of existing fact made to Mr and Mrs B by the Supplier at the Time of Sale. So, I do not think there was an actionable misrepresentation by the Supplier for the reasons Mr and Mrs B allege.

For these reasons, I do not think the Lender is liable to pay Mr and Mrs B any compensation for the alleged misrepresentations of the Supplier. And with that being the case, I do not think the Lender acted unfairly or unreasonably when it dealt with the Section 75 claim in question.

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

Mr and Mrs B say that the credit relationship between them and the Lender was unfair under Section 140A of the CCA, when looking at all the circumstances of the case, including parts of the Supplier's sales process at the Time of Sale that they have concerns about. It is those concerns that I explore here. I have explained my understanding of the law on the unfair relationship provisions in the legal and regulatory context section above.

I have considered the entirety of the credit relationship between Mr and Mrs B and the Lender along with all of the circumstances of the complaint and I do not 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 Supplier's sales and marketing practices at the Time of Sale – which includes training material that I think is likely to be relevant to the sale; and

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.

5. Any existing unfairness from a related credit agreement.

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

Mr and Mrs B's complaint about the Lender being party to an unfair credit relationship was also made for several reasons, which I will consider below.

In terms of the alleged misrepresentations discussed above, given I did not find that these occurred, they cannot have contributed to the relationship between Mr and Mrs B and the Lender being unfair. I deal with Mr and Mrs B's remaining concerns below.

1. Mr and Mrs B were subjected to a high-pressure sale presentation, which they were invited to without the Supplier making clear its commercial purpose, in breach of the CPUT Regulations.

My understanding is that Mr and Mrs B purchased Trial Membership from the Supplier in October 2014 while on a free or promotional holiday – which they were offered on condition that they attended a meeting. Mr and Mrs B have said in their client statement that this meeting lasted four or five hours and was a very high pressured and very persistent sales presentation.

At the Time of Sale, Mr and Mrs B attended another meeting where they purchased Fractional Club membership. They have not explained how that meeting came about or what they expected it to be. So, I do not think I can conclude that its purpose had been hidden from them in breach of the CPUT Regulations. It seems likely that Mr and Mrs B, given their experience just four months previously, would've had some understanding of what the meeting would entail.

Mr and Mrs B also say that they were pressured by the Supplier into purchasing Fractional Club membership at the meeting. I discuss this further below.

2. The Supplier told Mr and Mrs B that the purchase was a special offer (and price) only available on the day – which is a commercially aggressive practice under the Consumer Protection from Unfair Trading Regulations 2008 (the 'CPUT' Regulations).

The Letter of Complaint suggests that the on the day price created pressure for Mr and Mrs B to purchase Fractional Club membership. But their client statement does not say that they made the purchase due to being pressured into it. I acknowledge that they may have felt weary after a sales process that went on for a long time. But they say little about what was said or done by the Supplier during their sales presentation that made them feel as if they had no choice but to purchase Fractional Club membership when they simply did not want to.

Mr and Mrs B were given a 14-day cooling off period and they have not provided a credible explanation for why they did not cancel their membership during that time. Which I might expect them to do if they only purchased due to a pressurised sales process. I'm satisfied they were made aware of their cancellation rights since they signed a page of the sales documents that specifically notified them of those rights.

So, I think there is insufficient evidence to demonstrate that Mr and Mrs B made the decision to purchase Fractional Club membership because their ability to exercise that choice was significantly impaired by pressure from the Supplier.

3. Mr and Mrs B were forced to take the loan because the Supplier refused to take payment any other way.

I do not find this to be particularly plausible. I know that the Supplier did allow customers to make purchases by other means, such as by card payment or bank transfer. And the Letter of Complaint appears to contradict this allegation by saying that the Supplier's representative

told Mr and Mrs B that, amongst other things, it was quicker and easier to pay using the loan. That suggests there were other options available to them, albeit that the representative may have presented the loan as an attractive option.

But again, the suggestion that applying for a loan would be quicker and easier (the Letter of Complaint also says Mr and Mrs B were told it would be cheaper) is simply implausible. Since paying using a card would be almost instant, rather than having to fill in an application to the Lender.

Mr and Mrs B's client statement says the Supplier would not accept any other payment method. And didn't allow them time to source their own loan. But I do not find this to be sufficiently plausible and persuasive that I should conclude that is what happened. So, I am not persuaded by Mr and Mrs B's allegations about only being allowed to pay using the loan.

4. <u>Mr and Mrs B were not given any time alone to consider the paperwork – so they felt rushed and pressured to sign the Purchase Agreement and Loan Agreement – which is in breach of Finance and Leasing Association (the 'FLA') Lending Code.</u>

This allegation is undermined by notes made by the Supplier at the Time of Sale, which say that Mr and Mrs B were *"left… on their own in the office prior to signing"*. While the note does not indicate how long Mr and Mrs B were left alone, it does suggest to me that if they needed more time the Supplier would've agreed to this. I have seen other complaints, for example, where the customer has been allowed to consider the purchase overnight before signing the contract.

My comments above about the 14-day cooling off period also apply here. Overall, I think there is insufficient evidence to demonstrate that Mr and Mrs B made the decision to purchase Fractional Club membership because their ability to exercise that choice was significantly impaired by pressure from the Supplier.

5. <u>No proper affordability check was carried out, in breach of FLA Lending Code.</u>

The PR says that the right checks weren't carried out before the Lender lent to Mr and Mrs B. 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 and Mrs B was actually unaffordable before also concluding that they lost out as a result and then consider whether the credit relationship with the Lender was unfair to them for this reason. Again, from the information provided, I am not satisfied that the lending was unaffordable for the Mr and Mrs B.

I'm not persuaded, therefore, that Mr and Mrs B's credit relationship with the Lender was rendered unfair to them under Section 140A for any of the reasons above.

But our Investigator concluded there was another reason why their credit relationship with the Lender was unfair to them. And that's the possibility that Fractional Club membership was marketed and sold to them as an investment in breach of the prohibition against selling timeshares in that way.

Was Fractional Club membership marketed and sold at the Time of Sale as an investment in breach of regulation 14(3) of the Timeshare Regulations?

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

Regulation 14(3) of the Timeshare Regulations prohibited the Supplier from marketing or selling membership of the Fractional Club 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 Mr and Mrs B say that the Supplier did exactly that at the Time of Sale. So, that is what I have considered next.

The term "investment" is not defined in the Timeshare Regulations. In *Shawbrook & BPF v FOS*, the parties agreed that, 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*" at [56]. I will use the same definition.

I think Fractional Club membership could be viewed as an investment because it could be purchased in the hope or expectation of making a financial return or profit on what they paid for it when the Allocated Property is sold. But 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 and Mrs B as an investment in breach of Regulation 14(3), I have to be persuaded that it was more likely than not that the Supplier marketed and/or sold membership to them as an investment, i.e. told them or led them to believe that Fractional Club membership offered them the prospect of a financial gain (i.e., a profit) given the facts and circumstances of *this* complaint.

There is competing evidence in this complaint as to whether Fractional Club membership was marketed and/or sold by the Supplier at the Time of Sale as an investment in breach of regulation 14(3) of the Timeshare Regulations.

On the one hand, it is clear that the Supplier made efforts to avoid specifically describing membership of the Fractional Club as an 'investment' or quantifying to prospective purchasers, such as Mr and Mrs B, the financial value of their share in the net sales proceeds of the Allocated Property along with the investment considerations, risks and rewards attached to them. There were, for instance, disclaimers in the contemporaneous paperwork that state that Fractional Club membership was not sold to Mr and Mrs B as an investment. So, it's *possible* that Fractional Club membership wasn't marketed or sold to them as an investment in breach of Regulation 14(3).

On the other hand, I acknowledge that the Supplier's training material left open the possibility that the sales representative may have positioned Fractional Club membership as an investment. And Mr and Mrs B's Client Statement says they were told by the Supplier that Fractional club membership was a *"great investment as we would partially own property"* and *"the investment element was the main part of the sales pitch"*. So, I accept that it's also possible that Fractional Club membership was marketed and sold to Mr and Mrs B as an investment in breach of Regulation 14(3).

However, whether or not there was a breach of the relevant prohibition by the Supplier is not ultimately determinative of the outcome in this complaint for reasons I will come on to shortly. And with that being the case, it is 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 Mr and Mrs B rendered unfair?

As the Supreme Court's judgment in *Plevin* makes clear, it does not automatically follow that regulatory breaches create unfairness for the purposes of Section 140A. Such breaches and their consequences (if there are any) must be considered in the round, rather than in a narrow or technical way.

And in light of what the courts had to say in *Carney* and *Kerrigan,* it seems to me that, if I am to conclude that a breach of Regulation 14(3) led to a credit relationship between Mr and Mrs B and the Lender that was unfair to them and warranted relief as a result, whether the Supplier's breach of Regulation 14(3) lead them to enter into the Purchase Agreement and the Credit Agreement is an important consideration.

Mr and Mrs B's recollections

The PR has provided a client statement which sets out Mr and Mrs B's recollections of what happened at the Time of Sale. That was dated 22 February 2019 – before Mr and Mrs B complained to either the Supplier or the Lender about their Fractional Club membership. However, the client statement was not provided until 20 October 2023, after our Investigator requested it from the PR.

So, there was reason for me to question how much weight should be given to the statement. Having requested further information about how and when the statement was written, Mr B has confirmed that it was written by the PR on 22 February 2019, based on what he told the PR during a phone call that day. He was then sent a copy of the statement for him to check. Mr B has confirmed that the statement accurately reflects his recollection of what happened at the Time of Sale.

Mr B's description of how the client statement was written is in line with my understanding of how the PR took such statements around that time. And as such I accept that it was most likely written in February 2019.

The client statement said the following about the Supplier marketing and selling Fractional Club membership as an investment and, most importantly here, why Mr and Mrs B purchased it:

> *"We were advised this was a great investment as we would partially own property and then after so many years **we would get our money back** when this property was sold.*
>
> *…*

The investment element was the main part of the sales pitch. They kept going on about how this was a purchase of a fractional share in real estate. They used the idea of owning your home and that value going up for your children. It was just sold as basically as a second home as an investment. We knew it wasn't really our second home but they were saying things like "bricks and mortar" and "real estate investment increase". So, it was clear that if we bought this, ***we would get back our money in the future which was really attractive to us****."*

(my **emphasis** added)

So, it seems that Mr B is saying that the Supplier described Fractional Club membership as an investment in a number of different ways. And that as a result of that Mr B's expectation was that they would get their money back at the end of the membership term. Which was *"really attractive"* to Mr and Mrs B.

In light of this, it seems to me that however the Supplier described Fractional Club membership, Mr and Mrs B were not given the hope or expectation that they would make a financial gain or profit from Fractional Club membership. This means that they did not see Fractional Club membership as an investment (as defined above) at the Time of Sale. They expected to get back only what they had paid for it. And that this expectation, rather than any hope of making a profit (which they have not said they held or was important to their decision), was an important factor in their decision to enter into the purchase.

With that being the case, I do not think I can reasonably conclude that Mr and Mrs B's decision to purchase Fractional Club membership at the Time of Sale was motivated by the hope or expectation of a financial gain or profit. So, it seems likely that they would have pressed ahead with their 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 and Mrs B and the Lender was unfair to them even if the Supplier breached Regulation 14(3).

Mr and Mrs B's commission complaint

Mr and Mrs B 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 Financial Conduct Authority's Dispute Resolution Rules ('DISP').

But I don't think *Hopcraft, Johnson and Wrench* assists Mr and Mrs B in arguing that their credit relationship with the Lender was unfair to them for reasons relating to commission given the facts and circumstances of this complaint.

I haven't seen anything to suggest that the Lender and Supplier were tied to one another contractually or commercially in a way that wasn't properly disclosed to Mr and Mrs B, 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 and Mrs B 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 think any such failure is itself a reason to find the credit relationship in question unfair to Mr and Mrs B.

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 and Mrs B entered into wasn't high. At £2,116, it was only 10% of the amount borrowed and even less than that (5%) as a proportion of the charge for credit. So, if they had 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 they either wouldn't have understood that or would have otherwise questioned the size of the payment at that time. After all, Mr and Mrs B wanted Fractional Club membership and had no obvious means of their own to pay for it. And at such a low level, the impact of commission on the cost of the credit they needed for a timeshare they wanted doesn't strike me as disproportionate. So, I think they would still have taken out the loan to fund their purchase at the Time of Sale had the amount of commission been disclosed.

What's more, based on what I've seen, 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 and Mrs B but as the supplier of contractual rights that they 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 them 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 and Mrs B.

Section 140A: Conclusion

Given all the factors I've looked at in this part of my decision, and having taken all of them into account, I'm not persuaded that the credit relationship between Mr and Mrs B and the Lender under the Credit Agreement and related Purchase Agreement was unfair to them. And I don't think it would be fair or reasonable that I uphold this complaint on that basis.

Commission: The Alternative Grounds of Complaint

While I've found that Mr and Mrs B credit relationship with the Lender wasn't unfair to them for reasons relating to the commission arrangements between it and the Supplier, two of the grounds on which I came to that conclusion also constitute separate and freestanding complaints to Mr and Mrs B complaint about an unfair credit relationship. So, for completeness, I've considered those grounds on that basis here.

The first ground relates to whether the Lender is liable for the dishonest assistance of a breach of fiduciary duty by the Supplier because it took a payment of commission from the Lender without telling Mr and Mrs B (i.e., secretly). And the second relates to the Lender's compliance with the regulatory guidance in place at the Time of Sale insofar as it was relevant to disclosing the commission arrangements between them.

However, for the reasons I set out above, I'm not persuaded that the Supplier – when acting as credit broker – owed Mr and Mrs B a fiduciary duty. So, the remedies that might be available at law in relation to the payment of secret commission aren't, in my view, available to them. And while it's possible that the Lender failed to follow the regulatory guidance in

place at the Time of Sale insofar as it was relevant to disclosing the commission arrangements between it and the Supplier, I don't think any such failure on the Lender's part is itself a reason to uphold this complaint because, for the reasons I also set out above, I think they would still have taken out the loan to fund their purchase at the Time of Sale had there been more adequate disclosure of the commission arrangements that applied at that time.

Conclusion

In conclusion, I do not think that the Lender acted unfairly or unreasonably when it dealt with the relevant Section 75 claim and I am not persuaded that the Lender was party to credit relationships with Mr and Mrs B under the Credit Agreement that was unfair to them 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

For the reasons I've explained, I do not uphold this complaint.

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

Phillip Lai-Fang
Ombudsman