DRN-5823537

The complaint

Mr W's complaint is, in essence, that Mitsubishi HC Capital UK Plc, trading as Hitachi Capital (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 claims under Section 75 of the CCA.

What happened

Mr and Mrs W were existing members of a timeshare provider (the 'Supplier') – having purchased a number of products from it over time. But the product at the centre of this complaint is their membership of a timeshare that I'll call the 'Fractional Club' – which they bought on 22 May 2014 (the 'Time of Sale'). They entered into an agreement with the Supplier to buy 900 fractional points at a cost of £12,349 (the 'Purchase Agreement').

Fractional Club membership was asset backed – which meant it gave Mr and Mrs W 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 their membership term ends.

Mr and Mrs W paid for their Fractional Club membership by taking finance of £12,349 from the Lender (the 'Credit Agreement') in Mr W's sole name.

Mr and Mrs W – using a professional representative (the 'PR') – wrote to the Lender on 22 April 2019 (the 'Letter of Complaint' - LOC) 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 and Mrs W's concerns as a complaint and issued its final response letter on 21 May 2019, 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 W disagreed with the Investigator's assessment. The PR provided an additional statement from Mr W, which it said supported Mr and Mrs W's assertion that membership of the Fractional Club had been sold to them as an investment.

The investigator then reviewed the case again in light of the new evidence and arguments provided and issued a second view upholding the complaint. This was accepted by the PR but rejected by the Lender. It asked for an Ombudsman's decision – which is why the case was passed to me for review.

I issued a provisional decision (PD) explaining why I didn't think Mr W's concerns in respect of the sale should be upheld. Following my PD, I also communicated how I was not persuaded that Mr W's credit relationship with the Lender was unfair to him for reasons relating to the commission arrangements between it and the Supplier.

The PR didn't agree with my PD. It provided documentation in support of the complaint, and it set out the reasons why it didn't agree with my decision, and it explained why Mrs W wouldn't be able to participate in an oral hearing. It asked that her testimony and the documentary evidence on file be considered as her complete record of her account. And it said that she was elderly and vulnerable which should be considered. In relation to what I had said about commission, it said it didn't intend to challenge what I had said in respect of that issue. It also subsequently provided an addendum to its appeal with additional evidence and submissions. I'm now finalising my decision.

As the borrowing was taken out in Mr W's sole name, and he claims against the Lender by virtue of his rights under the CCA, I will refer to Mr W throughout the rest of my 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, 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:

<u>The Consumer Credit Sourcebook ('CONC') – Found in the Financial Conduct Authority's (the 'FCA') Handbook of Rules and Guidance</u>

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]

<u>The FCA's Principles</u>

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.

And having done that, I remain of the opinion that this complaint should not be upheld. I've set out my reasoning again below.

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 W was:

(1) told by the Supplier that Fractional Club membership had a guaranteed end date when that was not true.
(2) told by the Supplier that Fractional Club membership was an "investment" when that was not true.

However, 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. After all, a share in an allocated property was, by its very nature, an investment. And while, as I understand it, the sale of the Allocated Property could be postponed in certain circumstances according to the Fractional Club Rules, Mr W says little to nothing to persuade me that he was given a guarantee by the Supplier that the Allocated Property would be sold on a specific date, when such a promise would have been impossible to stand by, given the inevitable uncertainty of selling property some way into the future. And as there's nothing else on file to support the PR's allegation, I'm not persuaded that there was a representation by the Supplier on the issue in question that constituted a false statement of fact.

So, while I recognise that Mr W 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 75 of the CCA: the Supplier's Breach of Contract

I have already summarised how Section 75 of the CCA works and why it gives consumers a right of recourse against a lender. So, it is not necessary to repeat that here other than to say that, if I find that the Supplier is liable for having breached the Purchase Agreement, the Lender is also liable.

Mr W says that he could not holiday where and when he wanted to – which, on my reading of the complaint, suggests that the Supplier was not living up to its end of the bargain, potentially breaching the Purchase Agreement.

Yet, like any holiday accommodation, availability was not unlimited – given the higher demand at peak times, like school holidays, for instance. Some of the sales paperwork likely to have been signed by Mr W states that the availability of holidays was/is subject to demand. It also looks like he made use of his fractional points to holiday on a number of occasions. I accept that he may not have been able to take certain holidays. But I have not seen enough to persuade me that the Supplier had breached the terms of the Purchase Agreement.

So, from the evidence I have seen, I do not think the Lender is liable to pay Mr W any compensation for a breach of contract by the Supplier. And with that being the case, I do not think the Lender acted unfairly or unreasonably in relation to this aspect of the complaint either.

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 W 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 in relation to Fractional Club membership, including the contractual documentation and disclaimers made by the Supplier;
3. The commission arrangements between the Lender and the Supplier at the Time of Sale and the disclosure of those arrangements;
4. Evidence provided by both parties on what was likely to have been said and/or done at the Time of Sale;
5. The inherent probabilities of the sale given its circumstances; and, when relevant
6. 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 W and the Lender.

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

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

The PR says, for instance that:

1. the right checks weren't carried out before the Lender lent to Mr W and
2. Mr W was pressured by the Supplier into purchasing Fractional Club membership at the Time of Sale.

However, neither of these strike me as reasons why this complaint should succeed. I haven't seen anything to persuade me that the right checks weren't carried out by the Lender given this complaint's 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 W 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 W.

I acknowledge that Mr W may have felt weary after a sales process that went on for a long time. 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 hasn't provided a credible explanation for why he did not cancel the membership during that time. And with all of that being the case, there is insufficient evidence to demonstrate that Mr W 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 W'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 now 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 the prohibition against selling timeshares in that way.

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

Included in the PR's response to my PD was an explanation as to why Mrs W was unable to participate in an oral hearing due to her age and vulnerability. Although not requested specifically in this case, I will for the avoidance of any doubt, explain why I don't think an oral hearing is required in this case, even if it had been requested.

Oral hearings are something that I can direct happen under DISP 3.5.5. However, the Financial Ombudsman Service is set up to decide complaints informally and it is for me as the decision maker to determine what evidence I think I need to determine what is a fair and reasonable outcome to a complaint. Having considered everything, I do not think I need to hold an oral hearing to fairly determine this complaint, even if one had been requested.

This is because both parties have already provided lengthy submissions. In this case, I have statements from Mr W, other evidence, including the documents from the sale, and full submissions from PR and Lender to decide what I think was most likely to have happened. The PR has made submissions in respect of Mrs W not being able to participate in an oral hearing. And I'm very sorry to hear about her vulnerability. Whilst I acknowledge Mrs W was a party to the purchase agreement, the finance as I have said, was taken out by Mr W in his sole name. And I have evidence from him in the form of his witness statements. I'm satisfied

I'm able to weigh up what Mr W has said against the available evidence and arguments to determine what I think happened on the balance of probabilities without the need for an oral hearing. And as it's in everyone's interest to resolve this complaint as soon as possible, to grant a hearing at such a late stage would inevitably prolong the resolution of this case.
The Lender does not dispute, and I am satisfied, that Mr W'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.

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 W 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 W 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 to avoid specifically describing membership of the Fractional Club as an 'investment' or quantifying to prospective purchasers, such as Mr W, 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 W as an investment in breach of Regulation 14(3).
However, whether or not there was a breach of the relevant prohibition by the Supplier is not ultimately determinative of the outcome in this complaint for reasons I will come on to

shortly. And with that being the case, it's not necessary to make a formal finding on that particular issue for the purposes of this decision.

Was the credit relationship between the Lender and the Consumer rendered unfair?

Having 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 W 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 W 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 W decided to go ahead with his purchase. I say this because whilst the LOC says that the Fractional Club membership was sold to Mr W as an investment, I'm not persuaded that this was an important and motivating factor that led to him purchasing Fractional Club membership. I'll explain why.

After its initial response to my PD, the PR provided additional evidence in support of the claim. It provided a rescission letter to the Supplier dated 24 January 2019, in respect of the Timeshare purchases Mr W had made with the Supplier. And it said that this was relevant in summary, because it predated the complaint to the Lender and this service, and it expressly recorded that the allegations that the product was sold as an investment, with representations of return of profit, prompting Mr W's request for rescission.

When the complaint was referred to this service, the PR provided a statement from Mr W in support of the complaint, which was dated 16 July 2018. This statement covered a number of Timeshare purchases that Mr and Mrs W made with the Supplier and a different Timeshare Supplier. In relation to the Fractional Club membership purchase in May 2014, which is the subject matter of this complaint, Mr W said:

"We were told that we would get some money back."

And while Mr W also said that he was *"Told it (i.e., the Allocated Property) would rise but shouldn't be happening within the next 2 years;"* in the context of being motivated by the prospect of only getting some money back, rather than more money back (than he had first put in), I'm not persuaded that he was referring to the prospect of a profit.

With that being the case, it seems to me that, even if it could be said that the Supplier had breached Regulation 14(3), by Mr W's own version of events, his purchasing decision was motivated by the prospect of getting some money back as opposed to more money back.

After the investigator issued his non uphold view, the PR provided another statement from Mr W. This statement was also dated 16 July 2018. But it was in a different format to that provided with the complaint referral to this service, and whilst the content was similar there were differences. In particular, in relation to the Fractional Club membership being positioned as an investment during the May 2014 sale that is the subject of this complaint; Mr W said:

"The representatives advised of a product called the Fractional Owners Property Club. This was an investment in property that we would not be able to use but could use the fractional points for holidays worldwide. (The Supplier) would sell this property for us in 19 years. The representatives advised that the value of the property would rise. At the point of sale, we would have a profit from our investment and a guaranteed exit from the contract."

I also accept that the letter to the Supplier references the Timeshares being sold as an investment. But these are submissions, not direct testimony from Mr W in respect of the allegations made. And direct testimony from Mr W is vitally important to help me to assess the credibility and consistency of the submissions made and to clearly understand what was supposedly said, and to know the context in which it was supposedly said. It's also important for me to be able to see that the Letters of Claim and any subsequent submissions genuinely reflect Mr W's testimony. So, I have gone on to consider the statements provided by Mr W.

As I noted in my PD, I have a number of concerns about the additional statement. Firstly, I can see it was provided in response to the investigator's assessment that didn't uphold the complaint. Also, it was received more than several years after the sale complained about, and after the case of Shawbrook v FOS, a case which highlighted the potential significance of breaches of Regulation 14(3). And shortly after the investigator's assessment was issued, the additional statement was provided which appears to have been prepared on the same day as the original one, but with very different content. And I can't discount the possibility that notwithstanding the supplementary statement is dated from July 2018, that taking into account it wasn't provided to this service until November 2023, that its content was possibly influenced by the outcome of the judicial review. And considering the PR seems to be suggesting that Mr W provided his supplementary statement in 2018, I would have expected him to have provided his full recollections of what happened when preparing his statement at that time. So, I don't agree therefore that he's suffered any prejudice in providing his evidence.

So, I remain of the opinion that this all limits the weight I can reasonably apply to Mr W's subsequent statement. And I think the original statement is likely to have been a more reliable record of his recollections of the sales.

The PR has stated that I've been inconsistent with my approach compared to previous decisions issued by the service and has provided examples it feels demonstrates this. But my decision is based on consideration of Mr W's' specific circumstances. Each complaint turns on its own facts; an ombudsman's decision on how one timeshare sale occurred does not determine his, or any other ombudsman's, decisions about the facts of other sales at different times to different purchases. And I am not bound to follow what other ombudsman colleagues have said in other cases, that may on the face of it, appear ostensibly similar.

The PR has also reiterated that the judgment handed down in *Shawbrook & BPF v FOS* asserted that the relevant question in this circumstance is whether the breach of regulation 14(3) was a material factor in the decision to purchase, not whether it was the only factor or principal one. It feels that the supplementary statement Mr W has provided demonstrates that the investment promise was the decisive factor in his decision, which would allow him a greater return on his money when the property was sold. And it thinks I have made an error of law in how I have reached my conclusions.

I disagree, because as I've explained above, I have concerns as to the weight I can apply to what Mr W has said in his supplementary statement. As a result, I'm not persuaded from all of the testimony and evidence provided, that Mr W has adequately demonstrated that the promise of profit was a material motivating factor to his and Mrs W's decision to move ahead with the purchase – principal or otherwise.

All of the above doesn't mean Mr W 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 W doesn't persuade me that the 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 W'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). On the contrary, I think the evidence suggests he would have pressed ahead with this 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 W and the Lender 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 Mr W was not given sufficient information at the Time of Sale by the Supplier in order to make an informed choice.

It isn't clear what information the PR thinks the Supplier failed to provide at the Time of Sale. But as I've already indicated, the case law on Section 140A makes it clear that it does not automatically follow that regulatory breaches create unfairness for the purposes of the unfair relationship provisions. The extent to which such mistakes render a credit relationship unfair must also be determined according to their impact on the complainant.

So, while I acknowledge that it is also possible that the Supplier did not give Mr W sufficient information, in good time, in order to satisfy the requirements of Regulation 12 of the Timeshare Regulations (which was concerned with the provision of 'key information'), even if that was the case, neither Mr W nor the PR have persuaded me that they were deprived of information that would have led them to make a different purchasing decision at the Time of Sale. And with that being the case, even if there were information failings (which I make no formal finding on), I can't see why they led to a financial loss.

The PR also 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 W 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 W, 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 W 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 W.

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 W 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 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 W.

Overall conclusion

In conclusion, given the facts and circumstances of this complaint, I do not think that the Lender acted unfairly or unreasonably when it dealt with Mr W’s Section 75 claims. I am not persuaded that the Lender was party to a credit relationship with him under the Credit Agreement and related Purchase 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 Lender to compensate him.

My final decision

For the reasons set out above, my decision is not to uphold this complaint.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr W to accept or reject my decision before 11 March 2026.

Simon Dibble
Ombudsman