DRN-5839392

The complaint

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

What happened

Mrs B received a free holiday as compensation relating to some building work done on her house. While on the holiday she attended a presentation about timeshare membership at the resort where she was staying. As a result, Mrs B purchased membership of a timeshare (the 'Fractional Club') from a timeshare provider (the 'Supplier') on 5 May 2019 (the 'Time of Sale'). She entered into an agreement with the Supplier to buy 1,010 annual fractional points at a cost of £15,130.00 (the 'Purchase Agreement').

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

Mrs B paid for her Fractional Club membership by taking finance of £15,130.00 from the Lender (the 'Credit Agreement').

On 23 April 2021, Mrs B contacted the Lender directly to make a complaint. She said that she had received a letter about management charges from the Supplier. But that she had not been told about the management charges at the Time of Sale and had no notification of the management charges in the previous two years. She said the letter from the Supplier was the first she had heard about the management charges. Having spoken to the Supplier it had offered a repayment plan for the outstanding management charges and said that the annual management charges would continue (as would the loan repayments). She was unhappy about this.

On 17 June 2021, the Lender responded to the complaint. It said that Mrs B had been told about the management charges during the sales presentation and in the documents given to her at that time – which confirmed the management charges were annual and subject to change, what the first-year charge was and that annual fees were invoiced on 1 January thereafter. The Lender also said that when Mrs B called the supplier, having received a reminder letter about unpaid management charges, she had refused the offer of a repayment plan and asked to cancel her membership. But the Supplier had confirmed she could not cancel outside of the 14-day cooling off period.

Mrs B then engaged a professional representative (the 'PR') which wrote to the Lender on 25 November 2021 (the 'Letter of Complaint'). It said the letter replaced the previous complaint, which had been made without the benefit of legal advice. The Letter of Complaint gave the following grounds of complaint:

1. Misrepresentations by the Supplier at the Time of Sale giving Mrs B a claim against the Lender under Section 75 of the CCA, which the Lender failed to accept and pay, namely Mrs B was told by the Supplier the following (which was all untrue):

    a. Fractional Club membership had a guaranteed end date.

    b. She was buying an interest in a specific piece of "real property".

    c. Fractional Club membership was an "investment".

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

2. Breach of the Consumer Protection from Unfair Trading Regulations 2008 ('CPUT').

3. Fractional Club membership was a Collective Investment Scheme as defined in the Financial Services and Markets Act 2000 ('FSMA').

4. The credit agreement was signed under pressure.

5. Mrs B's creditworthiness was not assessed, and no adequate explanation of it was given to her.

6. Breach of the Office of Fair Trading ('OFT') guide on irresponsible lending.

The Lender responded to this in a letter dated 3 December 2021, in which it said it had already dealt with a complaint from Mrs B regarding the Fractional Club membership and it would not log a second complaint about the same purchase.

Mrs B referred the complaint to the Financial Ombudsman Service on 12 December 2021. It was assessed by an Investigator who, having considered the information on file, upheld the complaint on its merits.

The Investigator thought that the Supplier had marketed and sold Fractional Club membership as an investment to Mrs B at the Time of Sale in breach of Regulation 14(3) of the Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010 (the 'Timeshare Regulations'). And given the impact of that breach on her purchasing decision, the Investigator concluded that the credit relationship between the Lender and Mrs B was rendered unfair to her for the purposes of section 140A of the CCA.

Since the Lender has rejected the complaint and it has not been resolved by our Investigator, it falls to me to make a decision on the complaint.

Having reviewed the information provided, I shared with the Lender a letter from Mrs B's doctor saying she has a long history of mental health issues which would've impaired her ability to make a balanced decision about the purchase at the Time of Sale. I asked for the Lender's comments on this and for some further information on Mrs B's membership history – specifically what holiday bookings she had made using her Fractional Points and whether she ever paid the annual maintenance charges.

The Lender confirmed that on 14 May 2019, Mrs B made a holiday booking using her fractional points. The booking was for a one-week holiday staring on 24 April 2020. However, the holiday was cancelled, and no further bookings were made. The Lender has been unable thus far to confirm why the holiday was cancelled but given the timing, it seems likely to have been due to travel advice and/or restrictions relating to the Covid-19 pandemic. The Internet Archive shows the Foreign & Commonwealth Office was from 8 April 2020 advising UK citizens to return to the UK and not to travel abroad unless it was essential. And that the Spanish authorities had on 26 March 2020 closed the border to non-residents and ordered all hotels to close.

The Lender has told me that Mrs B paid the first-year annual management charge but did not pay it in later years.

In respect of the Doctor's letter, the Lender said it had not received this information previously. And that the Letter of Complaint only briefly mentioned this, saying only that *"the sale took advantage of our client's fragile mental health which should have been identified and pursued"*. The Lender said that its understanding of the legal position on this would be that Mrs B's mental health condition could only render the credit relationship unfair if the Supplier had been aware of it at the time or that it would've been so obvious that the Supplier ought to have known about it. And that there is nothing to suggest that the Supplier was made aware of any mental health issues nor that there were obvious signs of this at the Time of Sale such that the Supplier ought to have known about it.

I also asked PR for Mrs B's comments on:

- Why she had not used her Fractional Club membership to take any holidays.

- How she was able to recall so much detail about what happened at the Time of Sale bearing in mind her doctor's letter stated in relation to the Fractional Club membership that due to her health condition she was vulnerable at the Time of Sale and that *"she has little recollection of the details regarding this contract"*.

- Why the Supplier ought to have known Mrs B had a health condition at the Time of Sale such that it should not have proceeded with the sale of Fractional Club membership or the arranging of the Credit Agreement.

The PR responded to say that Mrs B's very poor health had prevented her from taking holidays, that she remembered the physical aspects of the sale because of the destress caused, but that she did not recall the details of the contract which ran to many pages, and that given the need for the Lender to *"know your client"* the Supplier should have established Mrs B's background including her medical history.

The PR has also said that it thinks commission was paid by the Lender to the Supplier, that this was not disclosed to Mrs B at the Time of Sale, and this is another reason I should find there was an unfair relationship.

I issued my provisional findings to the parties on 21 August 2025, which explained why I was not planning to uphold this complaint.

At the time of my provisional decision, I deferred my conclusions on the matter of commission disclosure in order to review that issue further. I've since written to the parties setting out my thoughts on why I wasn't persuaded to uphold this aspect of the complaint.

A copy of my provisional are below.

Responses to my provisional findings

The Lender didn't respond anything more for me to consider in response to my provisional findings. The PR didn't accept the proposed outcome. It made further submissions in support of Mrs B's position. Having received and reviewed these, I'm now proceeding with my final decision.

In doing so, I'm conscious that the PR has made a series of assertions surrounding the provision of information relating to commission arrangements. These include, among other things, expressing doubt that the Lender has provided key information, requesting that the information we have received be shared with it in full, and asking that we do not proceed with a decision before this is done and it has had an opportunity to make further submissions.

The PR's requests have been addressed by us under separate correspondence. For reasons I will explain in the course of this decision, I've concluded that it's appropriate for me to proceed with my determination.

The legal and regulatory context

The legal and regulatory context that I think is relevant to this complaint has been shared in several hundred published decisions on very similar complaints, as well as in previous correspondence with the parties. So there's no need for me to set this out again in detail here. I simply remind the parties that our rules[1] say that in considering what is fair and reasonable in all the circumstances of the complaint, I will 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.

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.

After considering the case afresh and having regard for what's been said in response to my provisional decision and in my subsequent correspondence, I find it offers no persuasive reason to depart from the conclusions I've previously set out. A copy of my provisional findings are below, and I am not persuaded to depart from them.

START OF COPY OF PROVISIONAL FINDINGS

I do not currently think this complaint should be upheld. Briefly, this is because even if the Supplier sold or marketed Fractional Club membership to Mrs B as an investment, I'm not persuaded that this was sufficiently important to her that she would not otherwise have entered into the Purchase Agreement. And I am not persuaded that there are any other reasons to uphold this complaint.

But before I fully explain my reasons, 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

[1] Financial Conduct Authority ("FCA") Handbook – DISP 3.6.4R ("R" denotes a rule).

on, or referred to, something that either party has said, that does not mean I have not considered it.

What is more, I have made my decision on the balance of probabilities – which means I have based it on what I think is more likely than not to have happened given the available evidence and the wider circumstances.

In this case Mrs B has not provided her direct recollection of what happened. The PR has confirmed it did not obtain any written statement from her prior to sending the Letter of Complaint, nor since. Mrs B has a Lasting Power of Attorney that was registered prior to the Date of Sale. And although Mrs B signed our complaint form and authorised the PR to act on her behalf, suggesting the PR believed she had capacity to do so at that time, in responding to my questions the PR provided the comments of Mrs B's attorney on her behalf.

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.

In short, a claim against the Lender under Section 75 essentially mirrors the claim Mrs B could make against 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 does not dispute that the relevant conditions are met in this complaint. And as I'm satisfied that Section 75 applies, if I find that the Supplier is liable for having misrepresented something to Mrs B at the Time of Sale, the Lender is also liable.

This part of the complaint was made for several reasons including the suggestion that Fractional Club membership had been misrepresented by the Supplier because it told Mrs B it had a guaranteed end date, that she was buying an interest in a specific piece of "real property", that Fractional Club membership was an "investment", and that the Supplier's holiday resorts were exclusive to its members – when none of that was true.

The PR has said that Mrs B was told that the Fractional Club membership had a guaranteed end date in that after 19 years Mrs B would have no further legal liability to CLC under or in respect of the Fractional Club membership. But that this was untrue because the sales process begins on the Sale Date shown on the Purchase Agreement and there is no guarantee any sale will result from this, so Mrs B's liability for management charges could continue indefinitely, and that the Supplier could block any sale.

However, the description of the property being sold after 19 years does not appear to have been untrue at the Time of Sale. Rather it seems to me that it reflects the main thrust of the contract Mrs B entered into – that after 19 years the Allocated Property was to be sold. Under Rules 9.1 and 9.2.9 of the relevant Fractional Club Rules, the sale of the Allocated Property could be postponed by the Vendor for up to two years, and longer than that for a specified period of time with the unanimous written consent of the 'Owners' of the fractions (which could include the Supplier if all the fractions in the Allocated Property had not been sold). But that is not the same as saying that is what would happen, it is merely an option that is available under the Rules. After all, it does not appear that the Supplier could postpone a sale against the wishes of the other owners (including Mrs B) beyond the two years allowed in the Rules. So, I am not persuaded that the representation that there was a guaranteed end date (if it was made) constituted a false statement of fact.

The PR says that Mrs B was told that she was buying an interest in a specific piece of "real property" when that was not true. However, telling prospective members that they were buying a fraction or share of one of the Supplier's properties was not untrue. Mrs B's share in the Allocated Property was clearly the purchase of a share of the net sale proceeds of a specific property in a specific resort (as identified on the Purchase Agreement). And while the PR might question the exact legal mechanism used to give Mrs B that interest, that does not change the fact that she acquired such an interest.

As for the rest of the Supplier's alleged pre-contractual misrepresentations, while I recognise that the PR has concerns about the way in which Mrs B's Fractional Club membership was sold, I am not persuaded that there was an actionable misrepresentation by the Supplier at the Time of Sale for the other reasons alleged. And I say that because:

- If the Supplier described Fractional Club membership as an investment, that does not appear to be at odds with the reality – that Mrs B had paid to acquire a right to a share in the net sale proceeds of the Allocated Property, which would see her receive some money back when the Allocated Property is sold (subject to her complying with the terms of the contract), which could be more than what she paid for that right.

- It seems unlikely that the Supplier would've said its holiday resorts were exclusive to its members, given that Mrs B was staying at one of those resorts at the Time of Sale when she was not herself a member.

What's more, as there's nothing else on file that persuades me there were any false statements of existing fact made to Mrs B by the Supplier at the Time of Sale, I do not think there was an actionable misrepresentation by the Supplier for the reasons the PR alleges.

For these reasons, therefore, I do not think the Lender is liable to pay 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.

Fractional Club membership was a Collective Investment Scheme

The PR says that Fractional Club membership was a Collective Investment Scheme as defined by FSMA.

However, the *FSMA (Collective Investment Schemes) Order 2001/1062* included *Schedule 001 Arrangements Not Amounting to a Collective Investment Scheme*, Paragraph 13 of which states that arrangements do not amount to a Collective Investment Scheme *"if the*

rights or interests of the participants are rights under a timeshare contract or a long-term holiday product contract".

Bearing in mind that Fractional Club membership was a timeshare contract, it does not appear that it can also have been a Collective Investment Scheme.[2]

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

I have already explained why I am not persuaded that the contract entered into by Mrs B was misrepresented by the Supplier in a way that makes for a successful claim under Section 75 of the CCA.

But Mrs B also says that the credit relationship between her 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 she has concerns about. It is those concerns that I explore here.

As Section 140A of the CCA is relevant law, I do have to consider it. So, in determining what is fair and reasonable in all the circumstances of the case, I will consider whether the credit relationship between Mrs B and the Lender was unfair.

Under Section 140A of the CCA, a debtor-creditor relationship can be found to have been or be unfair to the debtor because of one or more of the following: the terms of the credit agreement itself; how the creditor exercised or enforced its rights under the agreement; and any other thing done (or not done) by, or on behalf of, the creditor (either before or after the making of the agreement or any related agreement) (s.140A(1) CCA). Such a finding may also be based on the terms of any related agreement (which here, includes the Purchase Agreement) and, when combined with Section 56 of the CCA, on anything done or not done by the supplier on the creditor's behalf before the making of the credit agreement or any related agreement.

Section 56 plays an important role in the CCA because it defines the terms "antecedent negotiations" and "negotiator". As a result, it provides a foundation for a number of provisions that follow it. But it also creates a statutory agency in particular circumstances. And while Section 56(1) sets out three of them, the most relevant to this complaint are negotiations conducted by the supplier in relation to a transaction financed or proposed to be financed by a debtor-creditor-supplier agreement.

A debtor-creditor-supplier agreement is defined by Section 12(b) of the CCA as *"a restricted-use credit agreement which falls within section 11(1)(b) and is made by the creditor under pre-existing arrangements, or in contemplation of future arrangements, between himself and the supplier […]"*. And Section 11(1)(b) of the CCA says that a restricted-use credit agreement is a regulated credit agreement used to *"finance a transaction between the debtor and a person (the 'supplier') other than the creditor […] and "restricted-use credit" shall be construed accordingly."*

The Lender doesn't dispute that there was a pre-existing arrangement between it and the Supplier. So, the negotiations conducted by the Supplier during the sale of Mrs B's membership of the Fractional Club were conducted in relation to a transaction financed or proposed to be financed by a debtor-creditor-supplier agreement as defined by Section 12(b). That made them antecedent negotiations under Section 56(1)(c) – which, in turn, meant that they were conducted by the Supplier as an agent for the Lender as per Section

[2] This was dealt with at length in *Shawbrook Bank Ltd, R (On the Application Of) v Financial Ombudsman Service Ltd [2023] EWHC 1069 (Admin) (05 May 2023)*.

56(2). And such antecedent negotiations were "any other thing done (or not done) by, or on behalf of, the creditor" under s.140(1)(c) CCA.

Antecedent negotiations under Section 56 cover both the acts and omissions of the Supplier, as Lord Sumption made clear in *Plevin*, at paragraph 31:

> *"[Section] 56 provides that [when] antecedent negotiations for a debtor-creditor-supplier agreement are conducted by a credit-broker or the supplier, the negotiations are "deemed to be conducted by the negotiator in the capacity of agent of the creditor as well as in his actual capacity". The result is that the debtor's statutory rights of withdrawal from prospective agreements, cancellation and rescission may arise on account of the conduct of the negotiator whether or not he was the creditor's agent.'* […] *Sections 56 and 140A(3) provide for a deemed agency, even in a case where there is no actual one. […] These provisions are there because without them the creditor's responsibility would be engaged only by its own acts or omissions or those of its agents."*

And this was recognised by Mrs Justice Collins Rice in *Shawbrook & BPF v FOS* at paragraph 135:

> "*By virtue of the deemed agency provision of s.56, therefore, acts or omissions 'by or on behalf of' the bank within s.140A(1)(c) may include acts or omissions of the timeshare company in 'antecedent negotiations' with the consumer*".

In the case of *Scotland & Reast*, the Court of Appeal said, at paragraph 56, that the effect of Section 56(2) of the CCA meant that "*negotiations are deemed to have been conducted by the negotiator as agent for the creditor, and that is so irrespective of what the position would have been at common law"* before going on to say the following in paragraph 74:

> *"[...] there is nothing in the wording of s.56(2) to suggest any legislative intent to limit its application so as to exclude s.140A. Moreover, the words in s.140A(1)(c) "any other thing done (or not done) by, or on behalf of, the creditor" are entirely apposite to include antecedent negotiations falling within the scope of s.56(1)(c) and which are deemed by s.56(2) to have been conducted by the supplier as agent of the creditor. Indeed the purpose of s.56(2) is to render the creditor responsible for such statements made by the negotiator and so it seems to me wholly consistent with the scheme of the Act that, where appropriate, they should be taken into account in assessing whether the relationship between the creditor and the debtor is unfair."*[3]

So, the Supplier is deemed to be Lender's statutory agent for the purpose of the pre-contractual negotiations.

However, an assessment of unfairness under Section 140A isn't limited to what happened immediately before or at the time a credit agreement and related agreement were entered into. The High Court held in *Patel* (which was recently approved by the Supreme Court in the case of *Smith),* that determining whether or not the relationship complained of was unfair had to be made *"having regard to the entirety of the relationship and all potentially relevant matters up to the time of making the determination"* – which was the date of the trial in the case of an existing credit relationship or otherwise the date the credit relationship ended.

The breadth of the unfair relationship test under Section 140A, therefore, is stark. But it isn't a right afforded to a debtor simply because of a breach of a legal or equitable duty. As the Supreme Court said in *Plevin* (at paragraph 17):

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[3] The Court of Appeal's decision in *Scotland* was recently followed in *Smith*.

> *"Section 140A […] does not impose any obligation and is not concerned with the question whether the creditor or anyone else is in breach of a duty. It is concerned with […] whether the creditor's relationship with the debtor was unfair."*

Instead, it was said by the Supreme Court in *Plevin* that the protection afforded to debtors by Section 140A is the consequence of all of the relevant facts.

I have considered the entirety of the credit relationship between 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.

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.

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

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

Mrs B's complaint about the Lender being party to an unfair credit relationship was also made for several reasons, all of which I set out at the start of this decision.

They include the allegation that the Supplier misled Mrs B and carried on unfair commercial practices which were prohibited under the CPUT Regulations for the same reasons they gave for her Section 75 claim for misrepresentation and that the sales presentation was aggressive, that Mrs B was told the product would only be available (including at that price) for a very limited time and that Mrs B was given the impression she could not leave the premises until she agreed to the purchase and signed the contract.

But given the limited evidence in this complaint, I am not persuaded that anything done or not done by the Supplier was prohibited under the CPUT Regulations. I'm mindful of the lack of evidence provided directly from Mrs B. Further, the evidence I have seen from her Doctor calls into question whether her recollection of the sale can be reasonably relied upon to conclude that the Supplier acted in contravention of the CPUT Regulations. I will explain my reasoning on this point in more detail below.

Where the Letter of Complaint sets out the circumstances of the sale, it does not set out allegations that Mrs B felt she could not leave until she had agreed to the purchase and signed the contract. There is no explanation as to why, if she felt such pressure and only agreed the purchase because of this, she did not cancel the contract within the 14-day cooling off period or immediately complain to the Supplier and Lender. Mrs B did not mention these issues when first making her complaint, suggesting these issues were not of particular concern to her at that stage.

The Lender has also provided a copy of some contact notes held by the Supplier dated 5 May 2019 and 6 May 2019, both of which indicate that Mrs B was asked at that time if she felt any pressure to agree to the purchase, and she said that she did not, that she was happy with her decision and understood the information she was given (albeit there was a lot of it).

And with all of that being the case, I think there is insufficient evidence to demonstrate that Mrs B made the decision to purchase Fractional Club membership because her ability to exercise that choice was significantly impaired by pressure from the Supplier.

The PR says that the right checks weren't carried out before the Lender lent to 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 Mrs B was actually unaffordable before also concluding that she lost out as a result, and then consider whether the credit relationship with the Lender was unfair to her for this reason. Again, from the information provided, I am not satisfied that the lending was unaffordable for Mrs B. But if there is any further information on this (or any other points raised in this provisional decision) that Mrs B wishes to provide, I would invite her or the PR to do so in response to this provisional decision.

The PR says that Mrs B was not given information about the interest payable on the loan. But I can see that the Credit Agreement was signed at the Time of Sale, as is also confirmed in the Letter of Complaint. And that the Credit Agreement clearly set out the interest rate of the loan and the total charge for credit, which included all interest and fees payable, and the total amount payable if the loan ran to its full term. So, it does not appear that the allegation about the loan agreement being signed without Mrs B being aware of the interest payable is accurate.

The PR says that the Supplier breached the Office of Fair Trading ('OFT') Guide on Irresponsible Lending by carrying on business practices at the Time of Sale that were deceitful, oppressive, or otherwise unfair and improper. Overall, I am not persuaded that the Supplier acted in such a way that it would've breached the OFT Guide as alleged by the PR (albeit the OFT was no longer the regulator of consumer credit at the Time of Sale, contrary to what the PR states in the Letter of Complaint). As such I have also thought about the requirements of the Financial Conduct Authority ('FCA'), which took over the regulation of consumer credit from April 2014. But I have still found no reason to conclude that the Lender breached the relevant consumer credit regulations because of how the Supplier sold Fractional Club membership to Mrs B or how it arranged the loan at the Time of Sale.

I'm not persuaded, therefore, that Mrs B's credit relationship with the Lender was rendered unfair to her under Section 140A for any of the reasons above. But there is another reason why our Investigator concluded that Mrs B's credit relationship with the Lender was unfair to her. And that's the suggestion that Fractional Club membership was marketed and sold to her 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 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 PR says 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.

Mrs B's share in the Allocated Property clearly, in my view, constituted an investment as it offered her the prospect of a financial return – whether or not, like all investments, that was more than what she first put into it. 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 <u>as an investment</u>. 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 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 her as an investment, i.e. told her or led her to believe that Fractional Club membership offered her the prospect of a financial gain (i.e., a profit) given the facts and circumstances of *this* complaint.

However, while I acknowledge the possibility that Fractional Club membership was marketed or sold to Mrs B as an investment in breach of Regulation 14(3), in this case I do not think it is necessary to make a finding on that point. This is because I am not persuaded that the investment potential of Fractional Club membership was a driving factor in Mrs B's decision to go ahead with the purchase. I discuss my reasons further below.

<u>Was the credit relationship between the Lender and Mrs B rendered unfair?</u>

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.

I am also mindful of what HHJ Waksman QC (as he then was) and HHJ Worster had to say in *Carney* and *Kerrigan* (respectively) on causation.

In *Carney*, HHJ Waksman QC said the following in paragraph 51:

> *"[…] In cases of wrong advice and misrepresentation, it would be odd if any relief could be considered if they did not have at least some material impact on the debtor when deciding whether or not to enter the agreement. […] in a case like the one before me, if in fact the debtors would have entered into the agreement in any event, this must surely count against a finding of unfair relationship under s140A. […]"*

And in *Kerrigan*, HHJ Worster said this in paragraphs 213 and 214:

> *"[…] The terms of section 140A(1) CCA do not impose a requirement of "causation" in the sense that the debtor must show that a breach caused a loss for an award of substantial damages to be made. The focus is on the unfairness of the relationship, and the court's approach to the granting of relief is informed by that, rather than by a demonstration that a particular act caused a particular loss. Section 140A(1) provides only that the court* ***may*** *make an order* ***if*** *it determines that the relationship is unfair to the debtor. […]*
>
> *[…] There is a link between (i) the failings of the creditor which lead to the unfairness in the relationship, (ii) the unfairness itself, and (iii) the relief. It is not to be analysed in the sort of linear terms which arise when considering causation proper. The court is to have regard to all the relevant circumstances when determining whether the relationship is unfair, and the same sort of approach applies when considering what relief is required to remedy that unfairness. […]"*

So, it seems to me that, if I am to conclude that a breach of Regulation 14(3) led to a credit relationship between Mrs B and the Lender that was unfair to her and warranted relief as a result, whether the Supplier's breach of Regulation 14(3) which, having taken place during its antecedent negotiations with Mrs B, is covered by Section 56 of the CCA, falls within the notion of "any other thing done (or not done) by, or on behalf of, the creditor" for the purposes of 140(1)(c) of the CCA and deemed to be something done by the Lender) led her to enter into the Purchase Agreement and the Credit Agreement is an important consideration.

As previously mentioned, we do not have any direct evidence from Mrs B in this case. The PR says that what is written in the Letter of Complaint reflects what Mrs B told it about the sale. But I am mindful that Mrs B's Doctor provided a letter dated 15 July 2021, which includes the following comment:

> *"In 2019 whilst on holiday she signed up to a timeshare contract which has left her with large financial debts and she has little recollection of the details regarding this contract."*

This caused me to question how, if her poor health meant Mrs B had little recollection of the details regarding the Fractional Club membership contract in July 2021, by the time of the Letter of Complaint dated 25 November 2021, just four months later, Mrs B was able to provide quite a bit of detail about the circumstances of the sale, including being collected from her holiday apartment, being driven to two other resorts, what she was told about Fractional Club membership, the incentives offered to her, the lack of enquiries into her financial position and health, that she was taken to the *"Chairman's office"* to sign the documents without being given time to read them, and that she was given an "on-the-day" discount which created pressure to sign there and then. Because of this I asked the PR to provide its (or Mrs B's) comments on this apparent contradiction.

The PR responded, passing on the comments of Mr H, who holds lasting power of attorney for Mrs B. He said that while Mrs B did not remember the details of the contract, which ran to many pages, because of the distress caused she could recall the physical aspects of the interaction with the Supplier's representatives.

Whilst Mr H suggests that Mrs B did not recall the finer contractual details given the contract documents were very extensive, it is not clear to me that is what the Doctor meant. I would not generally expect a consumer to have a clear understanding of every aspect of long contractual documents, but to understand the main features of what they were purchasing and what they were paying for it. So, my reading of the Doctor's letter was that Mrs B did not really remember what happened at the Time of Sale nor really understand what she had purchased – which may have been understandable given her serious health issues. But this does mean, in my view, I can place little weight on the evidence of Mrs B's memories as there is contradictory evidence as to what she can remember.

The Doctor's letter went on to say that:

> *"In view of her past history I believe it is highly likely that [Mrs B] lacked the capacity at the time to make a balanced decision regarding this timeshare contract and in view of this I strongly believe her contract should be made null and void."*

A similar point is made briefly in the Letter of Complaint – that the Supplier ought to have realised that Mrs B lacked capacity to enter into the contract. So, I asked the PR for its reasons as to why it felt the Supplier should've realised this. Mr H responded, suggesting that *"Know Your Customer"* rules would mean that the Supplier should've enquired about Mrs B's financial and medical history. But, while the Lender (or the Supplier as its agent) would be expected to confirm Mrs B's identity (for example, to help prevent money laundering and/or fraud through identity theft), I cannot see that the Supplier was required or expected to have asked about Mrs B's medical history. I think that most people would consider questions about their medical history to be unreasonably intrusive for the purposes of obtaining a loan to pay for a timeshare contract.

Of course, this may have been different if Mrs B was clearly not in a position to make a decision about entering into the contract or that she clearly did not or could not understand the contract she was entering into. But while the Doctor's letter suggests she may not have had capacity to make a balanced decision about entering the contract, I have seen nothing that persuades me that this would have been, or ought reasonably to have been, obvious to the Supplier at the Time of Sale.

Indeed, Mrs B was fit to travel on her own, which she told the Supplier she did regularly. And the Supplier's contact notes from the Time of Sale show that Mrs B told the Supplier on 6 May 2019, the day after the sale took place, that while there was a lot of information to take in, she had understood the information she was given. And there is nothing in the contact notes or elsewhere that indicates the Supplier had any reason to be concerned about Mrs B's capacity to enter into the contract. So, I do not think there was any need or requirement for the Supplier to ask Mrs B about her medical history, nor that it should not have proceeded with the sale and brokering of the credit agreement due to concerns about her capacity to enter into the Purchase Agreement.

The Letter of Complaint does indicate that the Supplier described Fractional Club membership as a good investment from which Mrs B was hoping to achieve a future investment income. But, in any case, I am not persuaded that, if she was told this, it was important to Mrs B at the time of sale, or that if she had not been told this she would not have entered into the contract.

The Supplier's contact notes from the time make it clear that Mrs B had said she enjoyed holidaying alone and did this often. And that she was keen to use Fractional Membership to holiday with her grandchildren and great nieces and nephews (if they wanted to) because the accommodation the Supplier provided appeared to be perfectly suited to her needs. Although I appreciate that the Supplier's notes may be somewhat self-serving (for example, I doubt they would record anything that indicated there was a breach of Regulation 14(3)), in light of Mrs B's medical history, I think they are the best evidence I have about what happened at the Time of Sale.

I am mindful that what prompted Mrs B to complain directly to the Lender in April 2021 was nothing to do with being told Fractional Club membership was an investment. Her complaint was solely in relation to management charges. I appreciate that at that time she had not engaged the services of the PR, but I would've thought that the expected investment return, if important when purchasing Fractional Club membership, would've also been a concern when she had outstanding management charges to pay. This is because her membership was likely to be suspended due to non-payment of management charges, and that if she did not get up to date with her management charges, she would not receive her share of the net sale proceeds of the Allocated Property when it was sold – and so lose out on the chance of any return on what she paid for Fractional Club membership. But as there was no mention of this in her original complaint, I struggle to see why I should conclude that any investment element was of great importance to her.

I do not discount the possibility that what is said in the Letter of Complaint is Mrs B's recollection of what happened at the Time of Sale, or that her recollection may be accurate, given that what was alleged is not fanciful or implausible. But, overall, given all the evidence in this case and my concerns about relying on what is said in the Letter of Complaint, on balance, even if the Supplier 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 Mrs B'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 Mrs B and the Lender was unfair to her even if the Supplier had breached Regulation 14(3).

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

It is clear from the submissions of everyone involved in this complaint that there was a lot of information passed between the Supplier and Mrs B when she purchased membership of the Fractional Club at the Time of Sale. But she says that the Supplier failed to provide her with all of the information she needed about the ongoing maintenance fees.

I note that the documents provided to Mrs B at the Time of Sale did mention the management fees. The terms and conditions attached to the Purchase Agreement included the following:

- *"H Management charge: the Applicant hereby agrees that under the Rules he is obliged to pay the Management Charge together with any Value Added Tax or other similar tax thereon. The Management Charge for the first year is due and payable on receipt of a statement in respect of that charge by the Applicant. Management Charges are thereafter due on demand in each year in accordance with the Rules…"*

The Members Declaration that Mrs B signed included the following on management fees:

- *"3. We understand that currently the annual Management Charge is €794.00 for 2014 and that an invoice will be sent for this within 3 months of full payment of the Agreement and thereafter by 1st January each year."*

In light of this, on the balance of probabilities I think it is likely that Mrs B was told about the Management Charge at the Time of Sale

Commission: The Section 140A unfair relationship complaint

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 Mrs B 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 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 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 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 Mrs B entered into wasn't high. At £756.50, it was only 4.63% of the amount borrowed and 5% as a proportion of the charge for credit. So, if she 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 she either wouldn't have understood that or would have otherwise questioned the size of the payment at that time. After all, Mrs B wanted Fractional Club membership and had no obvious means of his own to pay for it. And at such a low level, the impact of commission on the cost of the credit she needed for a timeshare she wanted doesn't strike me as disproportionate. So, I think she would still have taken out the loan to fund his purchase at the Time of Sale had the amount of commission been disclosed.

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

Overall, therefore, I'm not persuaded that the commission arrangements between the Supplier and the Lender were likely to have led to a sufficiently extreme inequality of

knowledge that rendered the credit relationship unfair to 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 Mrs B and the Lender under the Credit Agreement and related Purchase Agreement was unfair to him. And as things stand, 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 Mrs B credit relationship with the Lender wasn't unfair to him 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 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 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 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 him. 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 she would still have taken out the loan to fund his purchase at the Time of Sale had there been more adequate disclosure of the commission arrangements that applied at that time.

END OF COPY OF PROVISIONAL FINDINGS

The PR originally raised various points of complaint, such as those giving rise to Mrs B's section 75 claim, which I addressed in my provisional decision. In its response, it hasn't made any further comments in relation to most of its original points or said anything that leads me to think it disagrees with my provisional conclusions in relation to those points. So, I'll focus here on the points the PR *has* made in response.

The PR's response to my provisional decision relates mainly to the issue of whether the credit relationship between Mrs B and the Lender was unfair *per* section 140A of the CCA. In particular, the PR has provided more comment in support of its position that the payment of a commission by the Lender to the Supplier led to an unfair credit relationship between the Lender and Mrs B. And it has reiterated its view that Mrs B's lack of capacity to understand the contract caused the relationship to be unfair.

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

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

The PR has asked for the documents the lender has provided to us to show the commission arrangements. While I appreciate the PR would like to have full disclosure of all of the documents and information the Lender has provided, our rules do not require me to provide this when dealing with a complaint.

As the PR has been informed, under DISP 3.5.9R I may, where I consider it appropriate, accept information in confidence (so that only an edited version, summary or description is disclosed to the other party). That is what I have done in my provisional decision.
I'm satisfied that agreements between the Lender and the Supplier are commercially sensitive and that the summary information on commission arrangements we've already shared with the PR is appropriate in this case.

I see no reason to find that this prejudices any arguments the PR or Mrs B are able to make in support of Mrs B's position. The PR has demonstrated its ability to present Mrs B's case and has had sufficient time to consider and make any further arguments.

As I've noted, the PR has disagreed with my provisional conclusions on whether the Lender should pay redress because of an unfair credit relationship arising in connection with commission arrangements between the Lender and the Supplier. The PR says, in summary, that when the overall circumstances of those arrangements are considered in the round, the credit relationship was plainly unfair. In support of this position the PR has expressed, among other things, that:

- The provisional decision doesn't properly apply the Supreme Court's judgment in *Hopcraft, Johnson and Wrench,* which concluded a range of factors informed whether a credit relationship between a consumer and a lender was unfair.

- A conflict of interest existed on the part of the Supplier, who provided neither independent nor competent explanation of the credit.

- Failure to disclose payment of commission – irrespective of the size of any payment - was a regulatory breach that goes to the heart of fairness.

I appreciate the time the PR has taken to put together its submissions on behalf of Mrs B. But I don't find what it has said offers persuasive grounds for me to reach a different conclusion on this issue.

I've previously set out my thoughts on any impact the Supreme Court's conclusions in *Hopcraft, Johnson and Wrench* has on Mrs B's arguments that her credit relationship with the Lender was unfair to her for reasons relating to commission given the facts and circumstances of this complaint.

The PR's response doesn't offer anything that leads me to think that, for the most part, any of the factors it has referenced were in fact at play in Mrs B's case. It hasn't, for example, provided evidence to show the existence of commercial or contractual ties that were concealed from Mrs B, any persuasive reasons to conclude that the Supplier's role was that of advisor to Mrs B, or to show that any other conflict of interest arose from the roles the Supplier did perform.

For such a claim to be successful would require more than the bare assertions that have been made in this case. I'm not persuaded that it is sufficient, as the PR seems to contend,

simply to suggest unsubstantiated allegations of fact and require that the Lender disprove them else the credit relationship be deemed unfair. This issue was considered in the judgment in *Promontoria (Henrico) Ltd v. Gurcharn Samra* [2019] EWHC 2327 (Ch) ("*Samra*"), where HHJ David Cooke held (at para.26):

> *"…the onus is on the claimant[4] to show, to the normal civil standard, that the relationship is not unfair because of any of the reasons set out in s 140A(1)(a)-(c). Whether it is so unfair is a matter for the court's overall judgment having regard to all the relevant circumstances and matters, including matters relating (i.e. personal) to the creditor and debtor. This onus on the claimant does not however mean, in my judgement…that where Mr Samra[5] makes allegations of fact on which he relies he does not have the burden of proving them to the normal civil standard. The onus placed on the creditor is as to the relationship between it and the debtor, and does not have the effect that factual allegations made by Mr Samra must be accepted unless they can be positively disproved by contrary evidence."*[6]

I'm satisfied the Lender has provided sufficient information in response to my enquiries to enable me to reach a conclusion about its commission arrangements with the Supplier. I've seen nothing in this case that leads me to think what the Lender has said about the commission arrangements is inaccurate. So, there's no reason for me to reach a different finding over those commission arrangements.

In its correspondence the PR has emphasised the regulatory breaches connected with a failure to disclose commission payment. I have already set out why in my view this doesn't automatically lead to an unfair credit relationship for which the Lender needs to offer redress. While I've considered all that the PR has submitted, I remain of that view.

Finally, the PR has repeated its assertion that Mrs B's lack of capacity to understand the contract means that her relationship with the Lender was unfair to her. However, as the PR's own submissions seem to point out, it is not enough simply for Mrs B to lack capacity. This would have to have been known by the Lender (or the Supplier as its agent). Or, if it was not known, the Lender (or the Supplier as its agent) ought reasonably to have known that Mrs B lacked capacity (or was vulnerable). Only then would the onus be on the Lender (or the Supplier as its agent) to take further care to ensure that Mrs did have capacity and understood what she was buying (or to refuse to complete the sale). But in this case, I have seen no persuasive evidence that Mrs B showed any signs of vulnerability or a lack of capacity at the Time of Sale (even if she was in fact vulnerable or she lacked capacity). The PR has only said that she did lack capacity. And while I understand its concerns, that is not enough to justify me finding the relationship was unfair.

Section 140A conclusion

Given all of the factors I've looked at in this part of my decision, and having taken all of them into account, I remain unpersuaded that the credit relationship between Mrs B and the Lender under the Credit Agreement and related Purchase Agreement was unfair to her such that it warrants the Lender offering any redress.

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[4] In this case the creditor answering a claim of an unfair credit relationship arising out of an overdraft facility.
[5] In this case the borrower making an allegation that there was an unfair credit relationship.
[6] I further note that in *Wilson v Clydesdale Financial Services Ltd t/a Barclays Partner Finance* [2021] (Unreported), the court also took the view that the burden is on the debtor to prove on the balance of probabilities *the facts* that purportedly create the unfairness. It is then that the lender's burden of proof that requires it to prove *the relationship* was not unfair kicks in. While I do not suggest this offers legal precedent, the subject matter of that case was a fractional timeshare sale, and given the similarities seems to me an appropriate approach when considering the facts in this case.

Conclusion

After careful reconsideration of the facts and circumstances of this complaint, I adopt my provisional conclusions as part of my final decision. For the reasons I've given above and in my earlier correspondence I've mentioned, I don't think the Lender acted unfairly or unreasonably when it dealt with Mrs B's section 75 claim. And I'm not persuaded that the Lender was party to a credit relationship with Mrs B that was unfair to her for the purposes of section 140A of the CCA. Having taken everything into account, I see no other reason why it would be fair or reasonable for me to direct the Lender to compensate Mrs B.

My final decision

For the reasons set out above, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B to accept or reject my decision before 9 March 2026.

Phillip Lai-Fang
Ombudsman