DRN-5853049

The complaint

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

What happened

Between 2000 and 2011 Mr B and Mrs B purchased around 50,000 timeshare points from the timeshare provider here (the 'Supplier') - these were 'non-fractional' points. Mr B and Mrs B later made a purchase of membership of a timeshare (the 'Fractional Club') from the same timeshare provider (the 'Supplier') in September 2013 (funded by another lender) and this purchase is not the subject of this complaint (this purchase being of 'fractional' points).

On the following occasions Mr B and Mrs B purchased further Fractional Club memberships from this Supplier– purchasing the following number of fractional points on the dates below

- purchased 13500 fractional points on 03 May 2014 for £8228 ('Purchase Agreement 1') and having traded in 13500 non-fractional points in exchange.
- purchased 23500 fractional points on 11 November 2014 in exchange for 23500 non-fractional points and purchased an additional 7500 fractional points for a total cost of £17,500. ('Purchase Agreement 2')
- purchased an additional 9000 fractional points for £12,270 on 22 October 2015. ('Purchase Agreement 3')

(which, when appropriate, I'll simply refer to as the ''Purchase Agreements').

Fractional Club membership was asset backed – which meant it gave Mr B and Mrs B more than just holiday rights. It also included a share in the net sale proceeds of a property named on the relevant purchase agreements (which I'll refer to as the 'Allocated Property 1, 2 and 3' or, when appropriate, the 'Allocated Properties') after their membership terms end.

Mr B and Mrs B paid for their fractional points by taking the following amounts of finance of from the Lender:

- £8228 on 03 May 2014 (Credit Agreement '1')
- £17500 on 11 November 2014 (Credit Agreement '2')
- £12270 on 22 October 2015 (Credit Agreement '3')

(which, when appropriate, I'll simply refer to as the ''Credit Agreements')

Mr B and Mrs B – using a professional representative (the 'PR') – wrote to the Lender on 21 May 2020 (the 'Letter of Complaint') to raise a number of different concerns. As those concerns haven't changed since they were first raised, and as both sides are familiar with them, it isn't necessary to repeat them in detail here beyond the summary above. The Lender dealt with Mr B and Mrs B's concerns as a complaint and issued its final response letter on 17 July 2020 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 B and Mrs B disagreed with the Investigator's assessment and asked for an Ombudsman's decision – which is why it was passed to me.

I issued my provisional findings to the parties on 05 September 2025. In my provisional decision, I said (in smaller font and in italics for clarity):

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. And having done that, I do not currently think this complaint should be upheld.

However, before I explain why, I want to make it clear that my role as an Ombudsman is not to address every single point that has been made to date. Instead, it is to decide what is fair and reasonable in the circumstances of this complaint. So, if I have not commented on, or referred to, something that either party has said, that does not mean I have not considered it.

I should add at this juncture that no claim under Section 75 of the CCA was made either in the letter of claim (May 2020) or in response to the assessment of the Investigator. Accordingly I've not addressed it because if the credit relationship were to be found unfair under s140a then the remedy sought by Mr B and Mrs B would be available in any case.

Section 140A of the CCA: did the Lender participate in one or more unfair credit relationships?

Mr B and Mrs B have not alleged actionable misrepresentations or breach of contract here, however there are 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 relationships between Mr B and Mrs B and the Lender along with all of the circumstances of the complaint, I don't think the credit relationships 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 Times of Sale along with any relevant training material;*
2. *The provision of information by the Supplier at the Times 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 Times of Sale;*
4. *The inherent probabilities of the sale given its circumstances; and, when relevant*
5. *Any existing unfairness from a related credit agreement.*

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

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

Mr B and Mrs B complaint about the Lender being party to unfair credit relationships was and is made for several reasons.

They include, for various reasons, the allegation that the Supplier carried on unfair commercial practices under Regulations 5 and 6 of the CPUT Regulations. However, as Regulations 5 and 6

state, commercial practices only amount to misleading actions or omissions if, in addition to satisfying one or more of the specific matters set out in those provisions, they cause or are likely to cause the average consumer to take a transactional decision they would not have taken otherwise. And as I haven't seen enough evidence to persuade me that, if there were any such actions or omissions at the Times of Sale (which I make no formal finding on), they led Mr B and Mrs B to make the purchasing decisions they did, I'm not persuaded that anything done or nor done by the Supplier amounted to an unfair commercial practice for the purposes of those provisions.

The PR also alleges that the Supplier acted unfairly under Regulation 7 Schedule 1 of the CPUT Regulations. But given the limited evidence in this complaint, I am not persuaded that the Supplier did.

In addition, the PR also suggests that:

1. *the right checks weren't carried out before the Lender lent to Mr B and Mrs B.*
2. *Mr B and Mrs B were pressured by the Supplier into purchasing Fractional Club membership at the Times of Sale.*
3. *there was one or more unfair contract terms in the Purchase Agreements.*

However, as things currently stand, none of this strikes me as reasons why this complaint should succeed. I haven't seen anything to persuade me that the right checks weren't carried out before 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 B and Mrs B was actually unaffordable before also concluding that they lost out as a result and then consider whether the credit relationships with the Lender were unfair to them for this reason. But from the information provided, I am not satisfied that any of the lending was unaffordable for the Mr B and Mrs B.

I acknowledge that Mr B and Mrs B may have felt weary after sales processes that went on for a long time. But they say little about what was said and/or done by the Supplier during their sales presentations that made them feel as if they had no choice but to purchase Fractional Club membership when they simply did not want to. They were also given a 14-day cooling off period and they have not provided a credible explanation for why they did not cancel their membership during that time (particularly having utilised this facility previously). Moreover, they did go on to upgrade their first and second purchases – which I find difficult to understand if the reason they went ahead with the purchases in question was because they were pressured into it. And with all of that being the case, there is insufficient evidence to demonstrate that Mr B and Mrs B made the decision to purchase Fractional Club membership because their ability to exercise that choice was significantly impaired by pressure from the Supplier.

As for the PR's argument that there were one or more unfair contract terms in the Purchase Agreements, I can't see that any such terms were operated unfairly against Mr B and Mrs B in practice, nor that any such terms led them to behave in a certain way to their detriment. And with that being the case, I'm not persuaded that any of the terms governing Fractional Club membership are likely to have led to an unfairness that warrants a remedy.

Overall, therefore, I don't think that Mr B and Mrs B credit relationships with the Lender were rendered unfair to them 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 relationships with the Lender was unfair to them. And that's the suggestion that Fractional Club membership was marketed and sold to them as an investment in breach of prohibition against selling timeshares in that way.

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

The Lender does not dispute, and I am satisfied, that Mr B and Mrs B's Fractional Club memberships 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 and Mr B and Mrs B say that the Supplier did exactly that at the Times of Sale – saying, in summary, that they were told by the Supplier that Fractional Club membership was the type of investment that would only increase in value.

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

A share in the Allocated Properties clearly constituted an investment as it offered Mr B and Mrs B the prospect of a financial return – whether or not, like all investments, that was more than what they 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 B and Mrs B as an investment in breach of Regulation 14(3), I have to be persuaded that it was more likely than not that the Supplier marketed and/or sold membership to them as an investment, i.e. told them or led them to believe that Fractional Club membership offered them the prospect of a financial gain (i.e., a profit) given the facts and circumstances of this complaint.

There is competing evidence in this complaint as to whether Fractional Club membership was marketed and/or sold by the Supplier at the Times 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 B and Mrs B, the financial value of their share in the net sales proceeds of the Allocated Properties 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 B and Mrs B as an investment in breach of Regulation 14(3).

However, whether or not there was a breach of the relevant prohibition by the Supplier is not ultimately determinative of the outcome in this complaint for reasons I will come on to shortly. And with that being the case, it'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 Times of Sale, I now need to consider what impact that breach had on the fairness of the credit relationships between Mr B and Mrs B and the Lender under the Credit Agreements and related Purchase Agreements 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 B and Mrs B and the Lender that was unfair to them and warranted relief as a result, whether the Supplier's breach of Regulation 14(3) led them to enter into the Purchase Agreements and the Credit Agreements 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 B and Mrs B decided to go ahead with their purchases. I've considered both the letter of claim and the statement issued by Mr B and Mrs B about these sales and I note that although there is factual information about the sales in question in these documents there is no persuasive explanation as how the manner of these sales in particular was material to their decisions to purchase here. Nor are there persuasive comments about the times of sale evidencing that the prospect of financial gain was an important and motivating factor in any of these purchases.

That doesn't mean they weren't interested in a share in the Allocated Properties. After all, that wouldn't be surprising given the nature of the products at the centre of this complaint. But as Mr B and Mrs B themselves don't persuade me that their purchases were motivated by their shares in the Allocated Properties 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 decisions they 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 B and Mrs B's decision to purchase Fractional Club membership at the Times of Sale was motivated by the prospect of a financial gain (i.e., a profit). On the contrary, I think the evidence suggests they would have pressed ahead with their purchase whether or not there had been a breach of Regulation 14(3). And for that reason, I do not think the credit relationships between Mr B and Mrs B and the Lender were unfair to them even if the Supplier had breached Regulation 14(3).

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

The PR says that Mr B and Mrs B were not given sufficient information at the Times of Sale by the Supplier about the ongoing costs of Fractional Club membership. The PR also says that the contractual terms governing the ongoing costs of membership and the consequences of not meeting those costs were unfair contract terms.

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.

I acknowledge that it is also possible that the Supplier did not give Mr B and Mrs B sufficient information, in good time, on the various charges they could have been subject to as Fractional Club members in order to satisfy the requirements of Regulation 12 of the Timeshare Regulations (which was concerned with the provision of 'key information'). But even if that was the case, I cannot see that the ongoing costs of membership were applied unfairly in practice. And as neither Mr B and Mrs B nor the PR have persuaded me that they would not have pressed ahead with their purchases had the finer details of the Fractional Club's ongoing costs been disclosed by the Supplier in compliance with Regulation 12, I cannot see why any failings in that regard are likely to be material to the outcome of this complaint given its fact and circumstances.

As for the PR's argument that there were one or more unfair contract terms in the Purchase Agreements, I can't see that any such terms were operated unfairly against Mr B and Mrs B in

practice, nor that any such terms led them to behave in a certain way to their detriment. And with that being the case, I'm not persuaded that any of the terms governing Fractional Club membership are likely to have led to an unfairness that warrants a remedy.

In summary, I wasn't minded to think that the Lender acted unfairly or unreasonably when it dealt with Mr B and Mrs B's claim.

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.

Applying the principles and factors set out in the Supreme Court judgment[1] handed down on 1 August 2025, I found nothing to suggest 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 B and Mrs B. Nor did I see anything that persuaded me that the commission arrangements between them gave the Supplier a choice over the interest rate which led Mr B and Mrs B into a credit agreement that cost disproportionately more than it otherwise could have.

Further, the flat rate and amount of commission paid was such that it gave me no reason to think that any failure to disclose it to Mr B and Mrs B had a material impact on their decision to enter into the Credit Agreements. At £82.28, it was only 1% of the amount borrowed and similarly (1.36%) as a proportion of the charge for credit for the first credit agreement. That didn't strike me as disproportionate; nor were the surrounding circumstances otherwise capable of rendering unfair the credit relationship between the Lender and Mr B and Mrs B such that the Lender needed to take any action in redress. (I should add for the second and third credit agreements no commission was paid.)

I didn't find any of the arguments put forward demonstrated that the credit agreements between Mr B and Mrs B and the Lender were unfair to them under section 140A of the CCA. Absent any other reason why it would be fair or reasonable to direct the Lender to compensate Mr B and Mrs B, I said I didn't propose to uphold the complaint.

Responses to my provisional findings

The Lender accepted my provisional decision. The PR didn't accept the proposed outcome. It made further submissions in support of Mr B and 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

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[1] *Johnson v FirstRand Bank Ltd, Wrench v FirstRand Bank Ltd and Hopcraft v Close Brothers Ltd* [2025] UKSC 33 ("*Hopcraft, Johnson and Wrench*")

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[2] 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. I'll explain why.

The PR originally raised various points of complaint 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 Mr B and Mrs B and the Lender was unfair *per* section 140A of the CCA. In particular, the PR has provided more comment in relation to whether the membership was sold to Mr B and Mrs B as an investment at the Times of Sale. It has also made further submissions 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 Mr B and Mrs B.

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 PR has questioned whether my provisional conclusions run contrary to precedent decisions issued by my ombudsman colleagues and the judgment handed down in *Shawbrook and BPF v FOS*. I don't believe they do. However, for the avoidance of doubt, other decisions issued by other ombudsmen do not have a precedent effect like some court judgments might, and each ombudsman must determine each case on its own specific facts. Further, the judgment referred to did not make a blanket finding that all products of the type Mr B and Mrs B purchased were mis-sold in the way the PR appears to be suggesting.

I remind the PR that in my provisional decision I accepted the possibility that Fractional Club membership was marketed and/or sold to Mr B and Mrs B as an investment, in breach of Regulation 14(3). I went on to explain that relevant case law[3] indicates that in considering the question of relief for any resultant unfairness in the credit relationship, I needed to take into account any material impact of such a breach on Mr B and Mrs B's decision whether to enter into the Purchase and Credit Agreements. It doesn't strike me that doing so flies in the face of either the handed down judgment or previous decisions the PR has mentioned.

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[2] Financial Conduct Authority ("FCA") Handbook – DISP 3.6.4R ("R" denotes a rule).
[3] *Carney* and *Kerrigan*

While the PR has referred me to Mr B and Mrs B's recollections and the Supplier's training materials, I have already considered these and what was said. And I set out in my provisional decision the reasons why I didn't find that evidence sufficiently persuasive that Mr B and Mrs B's purchasing decisions would have been any different, given the other motivational factors they had described. Having re-examined Mr B and Mrs B's statement that remains my view, for the reasons previously given, and I note that in both their original statement and the letter of claim there is no persuasive explanation of how the sales processes transgressed 14.3 or why such a transgression motivated them for these sales. Particularly I note that the letter of claim is lacking any persuasive description of how the regulation was breached-just the allegation it was. And I note in response to my provisional decision Mr B and Mrs B have again made these allegations of it being sold as an investment and now given some further, new detail about how this was done (albeit limited description of this in my view bearing in mind the time they say they were in these meetings), whilst also again claiming they were pressured into purchasing but without explaining why they didn't use the cancellation periods (having used this facility previously) or why they kept returning to the Supplier who they say repeatedly pressured them into making purchases they didn't want to. And bearing in mind the provision of these comments comes after both relevant case law was published and that they've had sight of my provisional decision, I cannot discount the possibility that these comments are coloured by one or both. Furthermore I don't think the arguments of being forced into significant financial purchases against their will, whilst also making the same purchases at the same time due to being motivated to do so by facets of those purchases being made sit particularly well together. And with the lack of persuasive description of what happened and why it motivated them for these purchases I don't think I can give what Mr B and Mrs B say substantial weight in my decision making.

So as I said before whether or not the Supplier marketed or sold Fractional Club membership as an investment in breach of Regulation 14(3), I'm not persuaded Mr B and Mrs B's decisions to make the purchases was materially impacted by the prospect of a financial gain. It follows that I find the credit relationships between Mr B and Mrs B and the Lender were not rendered unfair to them for this reason.

The provision of information by the Supplier at the Times 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 Mr B and Mrs B is able to make in support of Mr B and Mrs B's position. The PR has demonstrated its ability to present Mr B and 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. I've previously set out my thoughts on any impact the Supreme Court's conclusions in *Hopcraft, Johnson and Wrench*

has on Mr B and Mrs B's arguments that their credit relationships with the Lender were unfair to them 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 Mr B and Mrs B's case. It hasn't, for example, provided evidence to show the existence of commercial or contractual ties that were concealed from Mr B and Mrs B, any persuasive reasons to conclude that the Supplier's role was that of advisor to Mr B and 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. And I repeat that there was very little commission paid in one sale and none in the other two. So considering everything in the round 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.

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 relationships between Mr B and Mrs B

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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.

and the Lender under the Credit Agreements and related Purchase Agreements were unfair to them such that it warrants the Lender offering any redress.

Commission: The Alternative Grounds of Complaint

In my previous correspondence I mentioned that some of the grounds for complaint about the fairness or otherwise of the credit relationship could also constitute separate and freestanding complaints. I'll reiterate my findings here.

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

For the reasons I set out previously, I'm not persuaded that the Supplier – when acting as credit broker – owed Mr B and Mrs B a fiduciary duty. So, the remedies that might be available at law in relation to the payment of secret commission aren't, in my view, available to them. And while it's possible that the Lender failed to follow the regulatory guidance in place at the Times 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. For the reasons I have also previously set out, I think they would still have taken out the loan to fund their purchases at the Times of Sale had there been more adequate disclosure of the commission arrangements that applied at those times.

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'm not persuaded that the Lender was party to credit relationships with Mr B and Mrs B that were unfair to them 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 Mr B and 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 Mr B and Mrs B to accept or reject my decision before 12 March 2026.

Rod Glyn-Thomas
Ombudsman