

The complaint

Mr and Mrs H's 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') and (2) deciding against paying a claim for misrepresentation under Section 75 of the CCA.

Background to the Complaint

Mr and Mrs H purchased membership of a timeshare (the 'Fractional Club') from a timeshare provider (the 'Supplier'). They signed and dated the paperwork on 1 March 2013 (the 'Time of Sale'). They entered into an agreement with the Supplier to exchange their existing allocation of 12,000 points for 12,000 fractional points at a cost of £8,160 (the 'Purchase Agreement').

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

Mr and Mrs H paid for their Fractional Club membership by taking finance of £8,160 from the Lender (the 'Credit Agreement').

Mr and Mrs H – using a professional representative (the 'PR') – wrote to the Lender on 27 March 2019 (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 and Mrs H's concerns as a complaint and issued its final response letter on 23 May 2019, rejecting it on every ground.

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

Mr and Mrs H 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 decision (the 'PD') to the parties on 22 October 2025. In my PD, I said:

"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.

The Supplier's misrepresentations at the Time of Sale

Section 75 CCA imposes a "like claim" on the Lender for any misrepresentations or breaches of contract by the Supplier. So, the debtors, here Mr and Mrs H, are able to notify the Lender of their claim against it and, if the Lender fails or refuses to pay the claim, that may give rise to a complaint to the Financial Ombudsman Service.

Mr and Mrs H's claim under Section 75 CCA are "like" claims against the Lender which mirror the claims they could make against the Supplier. And so, it wouldn't be fair to expect the Lender to pay claims that arose after such a limitation defence would be available to the Supplier in court. As such, it's a relevant for me to consider whether Mr and Mrs H's claims were time-barred under the Limitation Act 1980 (the 'LA') before they first raised them with the Lender.

A claim for misrepresentation against the Supplier would ordinarily be made under Section 2(1) of the Misrepresentation Act 1967, and the limitation period to make such a claim expires six years from the date on which the cause of action accrued.

Mr and Mrs H's claim is subject to the limitation periods set out under Sections 2 and 9 of the LA, which are both six years from the date on which the cause of action accrued.

The date on which the cause of action accrued was at the Time of Sale. I say this because Mr and Mrs H entered into the Purchase Agreement at that time based on alleged misrepresentations of the Supplier, which they say they relied upon when deciding whether or not to make the purchase. And the Credit Agreement was used to finance the purchase, so it was when Mr and Mrs H entered into this that they suffered a loss.

Mr and Mrs H first notified the Lender of their claims against it on 27 March 2019, which was more than six years after the Time of Sale¹. With that being the case, I don't think it was unfair or unreasonable of the Lender to decline to pay the claim Mr and Mrs H made against it for the Supplier's alleged misrepresentations.

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

I've already explained why I'm not persuaded that Mr and Mrs H's claim under Section 75 CCA ought to have been accepted by the Lender. But there are other aspects of the sales process that, being the subject of dissatisfaction, I must explore with Section 140A in mind if I'm to consider this complaint in full – which is what I've done next.

Having considered the entirety of the credit relationship between Mr and Mrs H and the Lender along with all of the circumstances of the complaint, I don't think the credit relationship between them was likely to have been rendered unfair for the purposes of Section 140A. When coming to that conclusion, and in carrying out my analysis, I have looked at:

- *The standard of the Supplier's commercial conduct – which includes its sales and marketing practices at the Time of Sale along with any relevant training material;*
- *The provision of information by the Supplier at the Time of Sale, including the contractual documentation and disclaimers made by the Supplier;*

¹ I have seen a copy of the loan application form which Mr and Mrs H signed and dated on 1 March 2013, and a copy of the Credit Agreement, which was signed by them on 7 March 2013. As both these dates fall outside the time limit set out in the LA, I have not needed to make a formal finding on which date the limitation period starts from.

- Evidence provided by both parties on what was likely to have been said and/or done at the Time of Sale; and
- The inherent probabilities of the sale given its circumstances.

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

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

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

They include, for various reasons, the allegation that the Supplier misled Mr and Mrs H and carried on unfair commercial practices under 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 Time of Sale (which I make no formal finding on), they led Mr and Mrs H to make the purchasing decision 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.

In addition, the PR also says that:

- *Mr and Mrs H were pressured by the Supplier into purchasing Fractional Club membership at the Time of Sale.*
- *there was one or more unfair contract terms in the Purchase Agreement.*
- *No affordability checks were carried out by the Lender prior to agreeing to lend the money.*

I have also thought about whether Mr and Mrs H's allegations that the Fractional Club membership was misrepresented to them might have caused an unfair relationship.

However, as things currently stand, none of these strike me as reasons why this complaint should succeed.

The PR says the following about the sale, in its Letter of Complaint:

"...our clients were subjected to an 8-hour presentation. It was a very hot day and our clients wanted to 'get on with their holiday'".

"Our clients entered into the [Credit Agreement] on the same day that the "Fractional" timeshare contract was entered i.e. within the cooling off period. 'Advance consideration' is strictly prohibited."

I have thought about these allegations, which are repeated in Mr and Mrs H's witness statement, which they signed and dated on 10 October 2017. I have considered this alongside the Purchase Agreement and related Credit Agreement, as well as what the Lender and the Supplier have said about the sale.

The Supplier says Mr and Mrs H were not sold the Fractional Club membership during a presentation at its resort. Instead, it says Mr and Mrs H attended a presentation with the Supplier in Spain in November 2012, where they purchased 3,300 additional points. The

Supplier then provided Mr and Mrs H with the contractual documents by post as it says they had shown interest in the Fractional Club prior to this being available for sale. And I can see the Purchase Agreement they signed and dated states their home address, which is handwritten next to their signatures, as the place of signature. To me, this is clear evidence that Mr and Mrs H did not sign the paperwork during a sales presentation in Spain. I am aware that they attended a number of presentations with the Supplier over the years, and I think it's probable, and quite understandable, that they have misremembered the exact details of the events at the Time of Sale.

In response to the Investigator's request for clarification from Mr and Mrs H on this point, the PR says:

"Our clients are insistent that they entered into the contract with the [Supplier] and the [Lender] on the day of the presentation. Any suggestion otherwise is refuted entirely".

But I just don't think the contemporaneous paperwork that I have referred to above reflects this version of events.

Additionally, Mr and Mrs H have filled in the Credit Agreement application form, which they signed and dated on 1 March 2013. They have also filled in the Credit Agreement, which they signed and dated on 7 March 2013. So, contrary to what the PR says, they did not enter the Credit Agreement on the same day as the Purchase Agreement. But in any case, Mr and Mrs H 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. With all of that being the case, there is insufficient evidence to demonstrate that Mr and Mrs H made the decision to purchase Fractional Club membership because their ability to exercise that choice was significantly impaired by pressure from the Supplier.

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

I have thought about the PR's arguments that the Fractional Club was misrepresented to Mr and Mrs H. As these were presented in its Letter of Complaint, I don't think it's necessary to repeat them here, but in summary, it says that the Supplier made oral and written misrepresentations at the Time of Sale. As I've covered above, I don't think the Supplier made any oral representations at the Time of Sale, as I don't think Mr and Mrs H were sold the membership in a presentation with the Supplier. And I don't think any of the written contractual terms set out in the Letter of Complaint were not true.

Overall, therefore, I don't think that Mr and Mrs H's credit relationship with the Lender was 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 relationship 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 and Mrs H's Fractional Club membership met the definition of a "timeshare contract" and was a "regulated contract" for the purposes of the Timeshare Regulations.

Regulation 14(3) of the Timeshare Regulations prohibited the Supplier from marketing or selling Fractional Club membership as an investment. This is what the provision said at the Time of Sale:

"A trader must not market or sell a proposed timeshare contract or long-term holiday product contract as an investment if the proposed contract would be a regulated contract."

But the PR and Mr and Mrs H say that the Supplier did exactly that at the Time of Sale – saying the following:

- a) "Fractional Ownership is an investment in property;*
- b) in 15 years, the property is sold, and our clients would get their share of the ownership back;*
- c) our clients would "get our money back and make a profit"."*

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

A share in the Allocated Property clearly constituted an investment as it offered Mr and Mrs H 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 and Mrs H 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.

But on my reading of the evidence before me, I am not currently persuaded that the Supplier marketed and sold the Fractional Club membership to Mr and Mrs H as an investment. I say this having thought about what I know about the events leading to them signing the Purchase Agreement, which I have covered above. Mr and Mrs H did not attend a sales presentation at the Time of Sale, so I think it's most likely the Supplier told them about the Fractional Club product during the sales presentation they attended in November 2012, where they ultimately purchased more points from the Supplier to use for holidays. They received a letter from the Supplier, which they signed on 28 November 2012, which explains that they would be given the option to convert their points into the Fractional Club in the future. They could use the points for the 15-year duration of that contract to take holidays. The letter says the Allocated Property would be sold at the end of that period and they would be entitled to a share of the net proceeds of the sale. It says that this may be less than what

they originally paid for the points. It also says the purchase should not be regarded as an investment.

To me, the letter does not provide any information that frames the product as an investment, or as something that Mr and Mrs H could expect to profit from. And as Mr and Mrs H have been unable to recall anything they were told by the Supplier about the Fractional Club in that sales presentation in November 2012, I am not persuaded that they were told anything by the sales agent that could have breached Regulation 14(3).

Experience tells me that, the more time that passes between a complaint and the event complained about, the more risk there is of recollections being vague, inaccurate and/or influenced by discussion with others. And I think this is the case here as Mr and Mrs H's recollections of the events at the Time of Sale are not supported by the documentation. With this in mind, I don't think I can place the necessary weight on their testimony to find that the Supplier breached Regulation 14(3). And as such, I don't think Mr and Mrs H's relationship with the Lender was rendered unfair by the actions of the Supplier at the Time of Sale.

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

The PR says that Mr and Mrs H were not given sufficient information at the Time 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 and Mrs H 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 and Mrs H nor the PR have persuaded me that they would not have pressed ahead with their purchase 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 Agreement, I can't see that any such terms were operated unfairly against Mr and Mrs H 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 and Mrs H's section 75 claim.

At the time of my PD 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 judgment² handed down on 1 August 2025, I found nothing to suggest that the Lender and Supplier were tied to one another contractually or commercially in a way that wasn't properly disclosed to Mr and Mrs H. 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 and Mrs H 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 and Mrs H had a material impact on their decision to enter into the Credit Agreement. At £652.80, it was only 8.0% of the amount borrowed and even less than that (5.4%) as a proportion of the charge for credit. 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 and Mrs H such that the Lender needed to take any action in redress.

I didn't find any of the other arguments put forward demonstrated that the credit agreement between Mr and Mrs H and the Lender was 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 and Mrs H, I said I didn't propose to uphold the complaint.

Responses to my provisional findings

The Lender accepted my PD. The PR didn't accept the proposed outcome. It made further submissions in support of Mr and Mrs H'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 rules³ 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

² *Johnson v FirstRand Bank Ltd, Wrench v FirstRand Bank Ltd and Hopcraft v Close Brothers Ltd* [2025] UKSC 33 ("*Hopcraft, Johnson and Wrench*")

³ Financial Conduct Authority ("FCA") Handbook – DISP 3.6.4R ("R" denotes a rule).

reasonable in the circumstances of this complaint.

After considering the case afresh and having regard for what's been said in response to my PD, 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, such as those giving rise to Mr and Mrs H's section 75 claim, which I addressed in my PD. 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 PD relates mainly to the issue of whether the credit relationship between Mr and Mrs H 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 and Mrs H as an investment at the Time 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 and Mrs H.

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 that Mr and Mrs H purchased were mis-sold in the way the PR appears to be suggesting.

The PR has supplied copies of training materials and generic submissions, but these were all produced by a different timeshare provider to the Supplier that sold Mr and Mrs H their timeshare. The PR has not commented on why it thinks any of these submissions are relevant to Mr and Mrs H's complaint. I do not think they are. I have seen materials that *were* produced by the Supplier. I have also read and considered Mr and Mrs H's testimony before, and I set out in my PD why I didn't find that evidence sufficiently persuasive that Mr and Mrs H's purchase decision would have been any different, given the other motivational factors they described. Having re-examined Mr and Mrs H's statement that remains my view, for the reasons previously given.

The PR says: "*The documents were placed in front of our clients, at the end of an all-day sales presentation when they are hot, tired and pressured, including the finance documents.*" But as I explained in the PD, Mr and Mrs H signed the documents in their own home. They have written their home address as the place of signature on the Purchase Agreement. Neither the PR nor Mr and Mrs H have provided me with credible evidence to support their version of events that the documents were signed at the end of an "*all-day sales presentation*", so I see no reason to reach a different conclusion.

I remind the PR that in my PD I accepted the possibility that Fractional Club membership was marketed and/or sold to Mr and Mrs H as an investment, in breach of Regulation 14(3). I went on to explain that relevant case law⁴ indicates that in considering the question of relief

⁴ *Carney and Kerrigan*

for any resultant unfairness in the credit relationship, I needed to take into account any material impact of such a breach on Mr and Mrs H'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.

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 and Mrs H's decision to make the purchase was materially impacted by the prospect of a financial gain. It follows that I find the credit relationship between Mr and Mrs H and the Lender was not rendered unfair to them for this reason.

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 PD. 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 and Mrs H is able to make in support of Mr and Mrs H's position. The PR has demonstrated its ability to present Mr and Mrs H'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 PD 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 have read and considered the submissions made by the PR on behalf of Mr and Mrs H. 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 Mr and Mrs H's arguments that their credit relationship with the Lender was 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 and Mrs H's case. It hasn't, for example, provided evidence to show the existence of commercial or contractual ties that were concealed from Mr and Mrs H, any persuasive reasons to conclude that the Supplier's role was that of advisor to Mr and Mrs H, 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 claimant⁵ 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 Samra⁶ 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."⁷

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.

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 Mr and Mrs H and the Lender under the Credit Agreement and related Purchase Agreement was unfair to them such that it warrants the Lender offering any redress.

⁵ In this case the creditor answering a claim of an unfair credit relationship arising out of an overdraft facility.

⁶ In this case the borrower making an allegation that there was an unfair credit relationship.

⁷ 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.

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 and Mrs H (that is, secretly). 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.

For the reasons I set out previously, I'm not persuaded that the Supplier – when acting as credit broker – owed Mr and Mrs H a fiduciary duty. So, the remedies that might be available at law in relation to the payment of secret commission aren't, in my view, available to them. And while it's possible that the Lender failed to follow the regulatory guidance in place at the Time of Sale insofar as it was relevant to disclosing the commission arrangements between it and the Supplier, I don't think any such failure on the Lender's part is itself a reason to uphold this complaint. For the reasons I have also previously set out, I think they would still have taken out the loan to fund their purchase at the Time of Sale had there been more adequate disclosure of the commission arrangements that applied at that time.

Conclusion

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 Mr and Mrs H's section 75 claim. And I'm not persuaded that the Lender was party to a credit relationship with Mr and Mrs H that was 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 and Mrs H.

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 and Mrs H to accept or reject my decision before 11 March 2026.

Andrew Anderson
Ombudsman