DRN-5970886

The complaint

Mr U's complaint is, in essence, that Tandem Personal Loans Ltd trading as Oplo (the 'Lender'[1]) acted unfairly and unreasonably by (1) being party to an unfair credit relationship with him under Section 140A of the Consumer Credit Act 1974 (as amended) (the 'CCA'), (2) deciding against paying claims under Section 75 of the CCA.

What happened

Mr U was a member of a timeshare provider (the 'Supplier') – having purchased several products from it previously. But the product at the centre of this complaint is his membership of a timeshare that I'll call the 'Signature Collection' – which he bought on 1 April 2019 (the 'Time of Sale'). He entered into an agreement with the Supplier to buy 2,450 biannual fractional points at a cost of £12,381 (the 'Purchase Agreement') after trading in his existing Fractional Property Owners Club ('FPOC') membership.

Signature Collection membership was asset backed – which meant it gave Mr U 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 Suite') after his membership term ends. But unlike FPOC membership, it also allowed Mr U to stay in the Allocated Suite in a specified week in even years.

Mr U paid for his Signature Collection membership by taking finance of £30,294 from the Lender (the 'Credit Agreement'). The additional amount was used to pay off a loan with a different credit provider that Mr U used to purchase his FPOC membership.

Mr U – using a professional representative (the 'PR') – wrote to the Lender on 21 July 2022 (the 'Letter of Complaint') to raise several different concerns. Since then, the PR has raised some further matters it says are relevant to the outcome of the complaint. As both sides are familiar with the concerns raised, it isn't necessary to repeat them in detail here beyond the summary above.

The Lender dealt with Mr U's concerns as a complaint and issued its final response letter on 4 October 2022, 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 U disagreed with the Investigator's assessment and asked for an Ombudsman's decision – which is why it was passed to me. I issued a provisional decision explaining that I was not planning to uphold the complaint. I later issued emails to both sides to explain why I did not think the commission arrangements between the Lender and Supplier provided any compelling reasons to uphold the complaint.

[1] Tandem Personal Loans Ltd trading as Oplo took over the rights and responsibilities of the original credit provider in relation to Mr U's loan and the resulting credit relationship on 20 August 2022. Where I refer to the Lender in this decision, it should be taken to mean Tandem Personal Loans Ltd trading as Oplo and/or the original credit provider as appropriate.

The Lender accepted my provisional decision and had nothing to add with regards commission.

The PR accepted my provisional findings on commission but disagreed with my provisional decision. It said Signature Collection was sold as an investment by the Supplier and this created an unfair relationship between Mr M and the Lender.

The legal and regulatory context

In considering what is fair and reasonable in all the circumstances of the complaint, I am required under DISP 3.6.4R to take into account: relevant (i) law and regulations; (ii) regulators' rules, guidance and standards; and (iii) codes of practice; and (where appropriate), what I consider to have been good industry practice at the relevant time.

The legal and regulatory context that I think is relevant to this complaint is no different to that shared in several hundred ombudsman decisions on very similar complaints. And with that being the case, it is not necessary to set it out here.

In relation to Mr U's concerns about commission in this case, I think the following regulatory rules/guidance are relevant:

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

Below are the most relevant provisions and/or guidance as they were at the relevant time:

CONC 3.7.3 [R]
CONC 4.5.3 [R]
CONC 4.5.2 [G]

The FCA's Principles

The rules on consumer credit sit alongside the wider obligations of firms, such as the Principles for Businesses ('PRIN'). Set out below are those that are most relevant to this complaint:

Principle 6
Principle 7
Principle 8

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Following the responses from both parties, I've considered the case afresh. Having done so, I've reached the same decision as that which I outlined in my provisional findings – and for broadly the same reasons. A copy of my provisional findings are below. As such, I do not uphold this complaint.

START OF COPY OF PROVISIONAL FINDINGS

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

The CCA introduced a regime of connected lender liability under Section 75 that affords consumers ("debtors") a right of recourse against lenders that provide the finance for the acquisition of goods or services from third-party merchants ("suppliers") if there is an actionable misrepresentation and/or breach of contract by the supplier.

Certain conditions must be met if the protection afforded to consumers is engaged, including, for instance, the cash price of the purchase and the nature of the arrangements between the parties involved in the transaction. The Lender hasn't disputed that the relevant conditions are met. But for reasons I'll come on to below, it isn't necessary to make any formal findings on them here.

It was said in the Letter of Complaint that Signature Collection membership had been misrepresented by the Supplier at the Time of Sale because Mr U was:

1. Told by the Supplier that Signature Collection membership had a guaranteed end date when that was not true.

2. Told by the Supplier that he owned a 'fraction' of the Allocated Suite when that was not true as it was owned by a trustee.

3. Told by the Supplier that Signature Collection membership was an "investment" when that was not true.

Neither the PR nor Mr U have set out in any detail what words and/or phrases were allegedly used by the Supplier to misrepresent Signature Collection for the reason given in points 1 or 2. However, the PR says that such representations were untrue because the Allocated Suite was legally owned by a trustee and there was no indication of what duty of care it had to actively market and sell the property. Further, there is no guarantee that any sale will result at all, leaving prospective members to pay their annual management charge for an indefinite and unspecified period.

However, I cannot see why the phrases in points 1 or 2 above would have been untrue at the Time of Sale even if they were said. It seems to me that they reflect the main thrust of the contract Mr U entered into. And while, under the relevant Signature Collection Rules, the sale of the Allocated Suite could be postponed for up to two years by the 'Vendor'[2], longer than that if there were problems selling and the 'Owners'[3] agreed, or for an otherwise specified period provided there was unanimous agreement in writing from the Owners, that does not render the representation above untrue. So, I am not persuaded that the representation above constituted a false statement of fact even if it was made.

As for point 3, it does not strike me as a misrepresentation even if such a representation had been made by the Supplier (which I make no formal finding on). Telling prospective members that they were investing their money because they were buying a fraction or share of one of the Supplier's properties was not untrue – nor was it untrue to tell prospective members that they would receive some money when the Allocated Suite is sold. After all, purchasing Signature Collection membership clearly involved acquiring the rights to a share of the net sale proceeds of a specific property in a specific resort. And while the PR might question the exact legal mechanism used to give prospective members that interest, it did not change the fact that they acquired such an interest.

---

[2] Defined in the FPOC Rules as "CLC Resort Developments Limited".
[3] Defined in the FPOC Rules as "a purchaser who has entered into a Purchase Agreement and has been issued with a Fractional Rights Certificate (which shall include the Vendor for such period of time until the maximum number of Fractional Rights have been acquired)."

The PR has raised other matters as potential misrepresentations, but it seems to me that they are not allegations of the Supplier saying something that was untrue. Rather, that Mr U wasn't told things about the way the membership worked – for example, that the obligation to pay management fees could be passed on to his children. It seems to me that these are allegations that Mr U wasn't given all the information he needed at the Time of Sale, and I will deal with this further below.

So, while I recognise that Mr U - and the PR - have concerns about the way in which Signature Collection membership was sold by the Supplier, when looking at the claim under Section 75 of the CCA, I can only consider whether there was a factual and material misrepresentation by the Supplier. For the reasons I've set out above, I'm not persuaded that there was. And that means that I don't think that the Lender acted unreasonably or unfairly when it dealt with this Section 75 claim.

Section 75 of the CCA: the Supplier's Breach of Contract

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

Mr U says that he could not holiday where and when he wanted to. That was framed, in the Letter of Complaint, as an alleged misrepresentation. However, on my reading of the complaint, this suggests that the Supplier was not living up to its end of the bargain, potentially breaching the Purchase Agreement.

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

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

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

I've already explained why I'm not persuaded that Signature Collection membership was actionably misrepresented by the Supplier at the Time of Sale. But there are other aspects of the sales process that, being the subject of dissatisfaction, I must explore with Section 140A in mind if I'm to consider this complaint in full – which is what I've done next.

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

1. The standard of the Supplier's commercial conduct – which includes its sales and marketing practices at the Time of Sale along with any relevant training material.

2. The provision of information by the Supplier at the Time of Sale, including the contractual documentation and disclaimers made by the Supplier.

3. Evidence provided by both parties on what was likely to have been said and/or done at the Time of Sale.

4. The inherent probabilities of the sale given its circumstances.

5. Any existing unfairness from a related credit agreement.

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

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

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

They include allegations that:

1. Mr U was pressured by the Supplier into purchasing Signature Collection membership at the Time of Sale.

2. The right checks weren't carried out before the Lender lent to Mr U.

3. The loan interest was excessive.

4. The fact that the loan was used to refinance an earlier one wasn't set out in the Credit Agreement.

5. Mr U was not given a choice of lender by the Supplier.

However, as things currently stand, none of this strikes me as a reason why this complaint should succeed.

I acknowledge that Mr U may have felt weary after a sales process that went on for a long time. But he says little about what was said and/or done by the Supplier during his sales presentation that made him feel as if he had no choice but to purchase Signature Collection membership when he simply did not want to. Mr U was also given a 14-day cooling off period and he have not provided a credible explanation for why he did not cancel his membership during that time. And with all of that being the case, there is insufficient evidence to demonstrate that Mr U made the decision to purchase Signature Collection membership because his 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 U was actually unaffordable before also concluding that he lost out as a result and then consider whether the credit relationship with the Lender was unfair to him for this reason. But from the information provided, I am not satisfied that the lending was unaffordable for Mr U.

The PR says that the fact that the loan was used to refinance an earlier one wasn't set out in the Credit Agreement means the Lender isn't permitted to enforce the Credit Agreement.

However, it looks to me like Mr U knew, amongst other things, how much he was borrowing and repaying each month, who he was borrowing from, that he was refinancing an earlier loan and that he was borrowing money to pay for Signature Collection membership. And as the lending doesn't look like it was unaffordable for him, even if the Credit Agreement didn't contain all the information it needed to (which I make no formal finding on), I can't see why that led to Mr U experiencing a financial loss – such that I can say that the credit relationship in question was unfair on him as a result. And with that being the case, I'm not persuaded that it would be fair or reasonable to tell the Lender to compensate him.

Similarly, the PR has not explained how, if it were true, Mr U not being offered a different lender to pay for Signature Collection membership caused him any unfairness or financial loss. Mr U was aware of the interest rate, which was set out on the face of the Credit Agreement, as well as the term of the loan and the monthly repayments, so he understood what it was he was taking out.

Further, I don't think the rate of interest was excessive, compared either to other rates available from other point-of-sale lenders or on the open market, so I can't say it would be fair or reasonable to tell the Lender to do anything because of this.

Overall, therefore, I don't think that Mr U's credit relationship with the Lender was rendered unfair to him under Section 140A for any of the reasons above. But there is another reason why the PR now says the credit relationship with the Lender was unfair to him. And that's the suggestion that Signature Collection membership was marketed and sold to him as an investment in breach of the prohibition against selling timeshares in that way.

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

The Lender does not dispute, and I am satisfied, that Mr U's Signature Collection 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 Signature Collection 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 U say that the Supplier did exactly that at the Time of Sale.

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

A share in the net sale proceeds of the Allocated Suite could constitute an investment as it offered Mr U the prospect of a financial return – whether or not, like all investments, that is more than what he first put into it. But it is important to note at this stage that the fact that Signature Collection 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*.[4]

In other words, the Timeshare Regulations did not ban products such as the Signature Collection. They just regulated how such products were marketed and sold.

To conclude, therefore, that Signature Collection membership was marketed or sold to Mr U as an investment in breach of Regulation 14(3), I have to be persuaded that it was more likely than not that the Supplier marketed and/or sold membership to him as an investment, i.e. told him or led him to believe that Signature Collection membership offered him the prospect of a financial gain (i.e., a profit) given the facts and circumstances of *this* complaint.

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

On the one hand, the Supplier made efforts to avoid specifically describing membership of the Signature Collection as an 'investment' or quantifying to prospective purchasers, such as Mr U, the financial value of their share in the net sales proceeds of the Allocated Suite along with the investment considerations, risks and rewards attached to them.

On the other hand, I think that the Supplier's sales process left open the possibility that the sales representative may have positioned Signature Collection membership as an investment. So, I accept that it's equally possible that Signature Collection membership was marketed and sold to Mr U as an investment in breach of Regulation 14(3).

However, whether 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 Mr U rendered unfair?

Having found that it was possible that the Supplier breached Regulation 14(3) of the Timeshare Regulations at the Time of Sale, I now need to consider what impact that breach had on the fairness of the credit relationship between Mr U and the Lender under the Credit Agreement and related Purchase Agreement as the case law on Section 140A makes it clear that regulatory breaches do not automatically create unfairness for the purposes of that provision. Such breaches and their consequences (if there are any) must be considered in the round, rather than in a narrow or technical way.

Indeed, it seems to me that, if I am to conclude that a breach of Regulation 14(3) led to a credit relationship between Mr U and the Lender that was unfair to him and warranted relief as a result, it is important for me to consider whether the Supplier's breach of Regulation 14(3) led him to enter into the Purchase Agreement and the Credit Agreement.

On my reading of the evidence before me, the prospect of a financial gain from Signature Collection membership was not an important and motivating factor when Mr U decided to go ahead with his purchase. I say this because:

---

[4] The PR has argued that Signature Collection membership amounted to an Unregulated Collective Investment Scheme, however this was considered and rejected in the judgment in *R (on the application of Shawbrook Bank Ltd) v Financial Ombudsman Service Ltd and R (on the application of Clydesdale Financial Services Ltd (t/a Barclays Partner Finance)) v Financial Ombudsman Service* [2023] EWHC 1069 (Admin).

- The evidence provided directly from Mr U in this case is an unsigned and undated statement that was provided to us on 6 December 2023, but which the PR says was taken on 11 July 2022. In the statement, Mr U explains that in 2018 he purchased FPOC membership having been told that:

    - *"[FPOC] was an investment where you owned a portion of a property. Property prices were going up and at the end we would get money back as part of the profits. They said we could travel anywhere in the world."*

- While he uses the word investment, he explains this in terms of getting money back at the end as part of the profits from the sale of the Allocated Suite. This does not clearly speak to Mr U hoping or expecting to make a profit from the purchase. I think his use of the word profits is a reference to the net sale proceeds of the Allocated Suite, from which he would get money back – as opposed to profits on what he paid for Signature Collection membership in the first place. In any case, this was what he recalls being told during the previous purchase of FPOC membership, not at the Time of Sale.

- About the Time of Sale, Mr U says in the statement that:

    - *"When we got home and tried to book the holidays (following the 2018 purchase of FPOC membership], we discovered that we didn't have enough Fractional Points. We generally like 2 holidays a year but were hardly able to find anything that was suitable and that we would probably have to book in the winter season if we could find anything.*

      In 2019 we booked another holiday in Tenerife. We were put into a very luxurious apartment that had a huge terrace rather than a balcony, a jacuzzi and a smart TV etc.

      We attended the presentation where we talked to the rep about the number of Points that we had. They said that if we upgraded we could get the holidays that we wanted and that they would always be to the standard of luxury that they had shown us and that we were staying in and it would continue to be a better investment."

- Clearly, Mr U was unhappy with the holiday purchasing power his FPOC membership gave him. And there was a clear motivation to purchase Signature Collection membership (with an increased number of Fractional Points) to get the holidays he wanted. While Mr U also mentions being told that it would be a *"better investment"* it is not clear that he means this in terms of making a profit on what he paid for it. His comments above about the 2018 purchase provide important context for his use of the word investment. And as I mentioned above, they do not clearly speak to Mr U hoping or expecting to make a profit from the purchase. So, I do not think Mr U's statement is sufficient to justify finding that any breach of Regulation 14(3) was material to his decision to purchase at the Time of Sale.

- I have considered the other evidence the PR has provided:

    - The Letter of Complaint, dated 21 July 2022, describes the 2018 purchase of FPOC membership as being an investment opportunity. But it does not provide any context about what was meant by this. Given the PR says the statement was written shortly before the Letter of Complaint, I think it is fair to

assume that this was informed by Mr U's use of the word investment as analysed above.

- The Letter of Complaint described the purchase of Signature Collection at the Time of Sale as being motivated by needing more points to take the holidays Mr U wanted. It goes on to say that Mr U:

    - *"would own a part of the [Supplier's] asset which would grow in value like normal property and which they could sell in 19 years times as per Fractional Rights Certificate and recoup their total investment."*

- This refers to Mr U recouping his investment – in this context a reference to what he paid for Signature Collection membership. That does not clearly indicate that Mr U had the hope or expectation of making a profit, only of getting back what he paid for it. So, I do not think the Letter of Complaint uses the word investment as per the definition I set out above.

- A webform submitted by Mr U to a Timeshare Advice Company on 3 February 2022 in which he wrote, *"We have holiday investment shares with [the Supplier]… I don't think we will get the money back at the end as they said."* This speaks to Mr U hoping or expecting to get some money back at the end of his membership term. That is in line with how Signature Collection membership worked and does not clearly speak to Mr U hoping or expecting to make a profit.

- A questionnaire completed by the Timeshare Advice Company, which it completed during a call with Mr U on 17 March 2022. This suggested that Mr U purchased because of getting holidays and money back. The word profit is used in relation to property prices increasing. But given this was not written by Mr U directly it is not clear that he used this word or in what specific context. Given Mr U has provided a more detailed statement (as analysed above), I think that is likely to be a more reliable and accurate representation of Mr U's memories of what happened at the Time of Sale.

- Likewise, a call note made by the PR when speaking to Mr U on 17 March 2022 – some months before the statement and Letter of Complaint were written, said of the purchase at the Time of Sale that Mr U was:

    - *"convinced to upgrade to more points so easier to book the holiday + resorts wanted + the value of the property."*

- This speaks to Mr U having some interest in the Allocated Suite and its value but again does not make it clear that Mr U hoped or expected to profit from the purchase – as opposed to just getting some money back at the end.

- The call note said of the 2018 purchase of FPOC that it was:

    - *"presented as travel anywhere in the world + investment as owner of the property – value will increase so make profit."*

- While that suggests Mr U may have been motivated by making a profit, this was about the 2018 sale and the later, more detailed statement is not clear about this. And the call note was not written by Mr U directly. That it does not match exactly with the later, more detailed, statement suggests it is likely that

the call note is the less reliable representation of Mr U's recollections of the Time of Sale.

- So, overall, I am not persuaded that the evidence, as a whole, is sufficient for me to conclude that Mr U was motivated to purchase Signature Club membership at the Time of Sale because he hoped or expected to make a profit.

That doesn't mean Mr U wasn't interested in a share in the Allocated Suite. After all, that wouldn't be surprising given the nature of the product at the centre of this complaint. But as Mr U himself doesn't persuade me that his purchase was motivated by his share in the Allocated Suite and the possibility of a profit, I don't think a breach of Regulation 14(3) by the Supplier was likely to have been material to the decision he ultimately made.

On balance, therefore, even if the Supplier marketed or sold Signature Collection membership as an investment in breach of Regulation 14(3) of the Timeshare Regulations, I am not persuaded that Mr U's decision to purchase Signature Collection membership at the Time of Sale was motivated by the prospect of a financial gain (i.e., a profit). On the contrary, I think it is likely he would have pressed ahead with his purchase regardless of whether there had been a breach of Regulation 14(3). And for that reason, I do not think the credit relationship between Mr U and the Lender was unfair to him even if the Supplier did breach Regulation 14(3).

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

The PR says that Mr U was not given sufficient information at the Time of Sale by the Supplier about Signature Collection membership, including about the ongoing costs and the fact that Mr U's heirs could inherit these costs.

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 U sufficient information, in good time, on the various charges he could have been subject to as Signature Collection 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 U nor the PR have persuaded me that he would not have pressed ahead with his purchase had the finer details of the Signature Collection'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 facts and circumstances.

As for the PR's argument that Mr U's heirs would inherit the on-going management charges, I fail to see how that could be the case or that it could have led to an unfairness that warrants a remedy.

Mr U's Commission Complaint

Commission: The Section 140A unfair relationship complaint

Mr U says that a payment of commission from the Lender to the Supplier at the Time of Sale should lead me to uphold this complaint because, simply put, information in relation to that payment went undisclosed at the Time of Sale.

As both sides already know, the Supreme Court handed down an important judgment on 1 August 2025 in a series of cases concerned with the issue of commission: *Johnson v FirstRand Bank Ltd, Wrench v FirstRand Bank Ltd and Hopcraft v Close Brothers Ltd* [2025] UKSC 33 ('Hopcraft, Johnson and Wrench').

The Supreme Court ruled that, in each of the three cases, the commission payments made to car dealers by lenders were legal, as claims for the tort of bribery, or the dishonest assistance of a breach of fiduciary duty, had to be predicated on the car dealer owing a fiduciary duty to the consumer, which the car dealers did not owe. A "disinterested duty", as described in *Wood v Commercial First Business Ltd & ors and Business Mortgage Finance 4 plc v Pengelly* [2021] EWCA Civ 471, is not enough.

However, the Supreme Court held that the credit relationship between the lender and Mr Johnson was unfair under Section 140A of the CCA because of the commission paid by the lender to the car dealer. The main reasons for coming to that conclusion included, amongst other things, the following factors:

1. The size of the commission (as a percentage of the total charge for credit). In Mr Johnson's case it was 55%. This was "so high" and "a powerful indication that the relationship…was unfair" (see paragraph 327);

2. The failure to disclose the commission; and

3. The concealment of the commercial tie between the car dealer and the lender.

The Supreme Court also confirmed that the following factors, in what was a non-exhaustive list, will normally be relevant when assessing whether a credit relationship was/is unfair under Section 140A of the CCA:

1. The size of the commission as a proportion of the charge for credit;

2. The way in which commission is calculated (a discretionary commission arrangement, for example, may lead to higher interest rates);

3. The characteristics of the consumer;

4. The extent of any disclosure and the manner of that disclosure (which, insofar as Section 56 of the CCA is engaged, includes any disclosure by a supplier when acting as a broker); and

5. Compliance with the regulatory rules.

From my reading of the Supreme Court's judgment in Hopcraft, Johnson and Wrench, it sets out principles which apply to credit brokers other than car dealer–credit brokers. So, when considering allegations of undisclosed payments of commission like the one in this complaint, *Hopcraft, Johnson and Wrench* is relevant law that I'm required to consider under Rule 3.6.4 of the Financial Conduct Authority's Dispute Resolution Rules ('DISP').

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

I haven't seen anything to suggest that the Lender and Supplier were tied to one another contractually or commercially in a way that wasn't properly disclosed to Mr U, nor have I seen anything that persuades me that the commission arrangement between them gave the Supplier a choice over the interest rate that led Mr U into a credit agreement that cost disproportionately more than it otherwise could have.

I acknowledge that it's possible that the Lender and the Supplier failed to follow the regulatory guidance in place at the Time of Sale insofar as it was relevant to disclosing the commission arrangements between them.

But as I've said before, the case law on Section 140A makes it clear that regulatory breaches do not automatically create unfairness for the purposes of that provision. Such breaches and their consequences (if there are any) must be considered in the round, rather than in a narrow or technical way. And with that being the case, it isn't necessary to make a formal finding on that because, even if the Lender and the Supplier failed to follow the relevant regulatory guidance at the Time of Sale, it is for the reasons set out below that I don't think any such failure is itself a reason to find the credit relationship in question unfair to Mr U.

In stark contrast to the facts of Mr Johnson's case, the amount of commission paid by the Lender to the Supplier for arranging the Credit Agreement that Mr U entered into wasn't high. At £757.35, it was only 2.5% of the amount borrowed and even less than that (2.3%) as a proportion of the charge for credit. So, if he 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 he either wouldn't have understood that or would have otherwise questioned the size of the payment at that time.

After all, Mr U wanted Signature Collection 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 he needed for a timeshare he wanted doesn't strike me as disproportionate. So, I think he 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 Mr U but as the supplier of contractual rights that he obtained under the Purchase Agreement, the transaction doesn't strike me as one with features that suggest the Supplier had an obligation of 'loyalty' to him when arranging the Credit Agreement and thus a fiduciary duty.

Overall, therefore, I'm not persuaded that the commission arrangements between the Supplier and the Lender were likely to have led to a sufficiently extreme inequality of knowledge that rendered the credit relationship unfair to Mr U.

Section 140A: Conclusion

Given all the factors I've looked at in this part of my decision, and having taken all of them into account, I'm not persuaded that the credit relationship between Mr U 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 Mr U 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 Mr U complaint about an unfair credit relationship. So, for completeness, I've considered those grounds on that basis here.

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

However, for the reasons I set out above, I'm not persuaded that the Supplier – when acting as credit broker – owed Mr U 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 he 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's response to my provisional findings about an unfair relationship

My role as an Ombudsman isn't to address every single point which has been made to date, but to decide what is fair and reasonable in the circumstances of this complaint. If I haven't commented on, or referred to, something that either party has said, this doesn't mean I haven't considered it. Rather, I've focused here on addressing what I consider to be the key issues in deciding this complaint and explaining the reasons for reaching my final decision.

The PR's further comments in response to the provisional decision only relate to the issue of whether the credit relationship between Mr U and the Lender was unfair. In particular, the PR has provided further comments in relation to whether the membership was sold to Mr U as an investment at the Time of Sale.

As outlined in my provisional decision, the PR originally raised various other points of complaint, all of which I addressed in my provisional findings. But it didn't make any further comments in relation to those in their response to my provisional decision. Indeed, they haven't said they disagree with any of my provisional conclusions in relation to those other points. And since I haven't been provided with anything more in relation to those other points by either party, I see no reason to change my conclusions in relation to them as set out above.

The PR has provided further comments and evidence which in my view relate to whether Signature Collection membership was marketed or sold as an investment in breach of the prohibition in Regulation 14(3) of the Timeshare Regulations. However, as I explained in my provisional decision, while the Supplier's sales processes left open the possibility that the sales representative may have positioned Signature Collection membership as an investment, it isn't necessary to make a finding on this as it is not determinative of the outcome of the complaint. I explained that Regulatory breaches do not automatically create unfairness and that such breaches and their consequences (if there are any) must be considered in the round, rather than in a narrow or technical way.

The PR's comments and evidence in this respect do not persuade me that I should uphold Mr U's complaint, because they do not make me think it's any more likely that the Supplier's breach of Regulation 14(3) led Mr U to enter into the Purchase Agreement and the Credit Agreement.

The PR has provided its further thoughts as to Mr U's likely motivations for purchasing Signature Collection membership. I recognise it has interpreted Mr U's evidence differently to how I have and thinks it points to him having been motivated by the prospect of a financial gain from Signature Collection membership.

In my provisional decision, I explained the reasons why I didn't think Mr U's purchase was motivated by the prospect of a financial gain (i.e., a profit). And although I have carefully considered the PR's arguments in response to this, I'm not persuaded the conclusions I reached on this point were unfair or unreasonable.

The PR has highlighted part of the Judgment in *R (on the application of Shawbrook Bank Ltd) v Financial Ombudsman Service Ltd and R (on the application of Clydesdale Financial Services Ltd (t/a Barclays Partner Finance)) v Financial Ombudsman Service [2023] EWHC 1069 (Admin)* ('*Shawbrook and BPF v FOS*') suggesting from this that the term investment extends beyond profit or financial gain to the prospect of money back. I have taken *Shawbrook and BPF v FOS* into account when making my decision and I don't think that is what the judge intended in the part of the judgement the PR has highlighted. I explained in my provisional decision that the definition of investment I used was that agreed by the parties in *Shawbrook & BPF v FOS* and I see no reason to view this differently.

So, ultimately, for the above reasons, along with those I already explained in my provisional decision, I remain unpersuaded that any breach of Regulation 14(3) was material to Mr U's purchasing decision. And for that reason, I do not think the credit relationship between Mr U and the Lender was unfair to Mr U even if the Supplier had breached Regulation 14(3).

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr U to accept or reject my decision before 9 February 2026.

Phillip Lai-Fang
Ombudsman