DRN-5978952

The complaint

Mr and Mrs L'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 under section 75 of the CCA.

Background to the complaint

Mr and Mrs L purchased membership of a timeshare (the 'Fractional Club') from a timeshare provider (the 'Supplier') on 20 February 2014 (the 'Time of Sale'). They entered into an agreement with the Supplier to buy 1,500 fractional points at a cost of £10,694 (the 'Purchase Agreement').

Fractional Club membership was asset backed – which meant it gave Mr and Mrs L 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 L paid for their Fractional Club membership by taking finance of £10,694 from the Lender in their joint names (the 'Credit Agreement'). The Lender paid the Supplier a commission of £1,069:40.

Mr and Mrs L – using a professional representative (the 'PR') – wrote to the Lender on 13 June 2017 (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 L's concerns as a complaint and issued its final response letter on 14 August 2017, 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 L disagreed with the Investigator's assessment and asked for an ombudsman's decision.

I issued my provisional findings to the parties on 26 November 2025. In my provisional decision, I said the following:

What I've provisionally decided – and why

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

And having done that, I 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.

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

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

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

It was said in the Letter of Complaint that Fractional Club membership had been misrepresented by the Supplier at the Time of Sale because Mr and Mrs L were told by the Supplier:

(1) that Fractional Club membership had a guaranteed end date when that was not true;

(2) that they were buying an interest in a specific piece of "real property" when that was not true;

(3) that Fractional Club membership was an "investment" when that was not true.

The words and/or phrases allegedly used by the Supplier to misrepresent the Fractional Club for the reason given in point 1 were set out by the PR in the Letter of Complaint, and they were limited to: "*the Fractional Property Ownership Scheme had a guaranteed end date, specifically after 19 years, after which the clients would have no further legal liability to [the Supplier] under or in respect of the Scheme."*

The PR says that such a representation was untrue because the Sales Process begins on the Sale Date as defined in the Fractional Club Rules, and under Rule 9, particularly Rules 9.2.9 and 9.2.12, 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 phrase above would have been untrue at the Time of Sale even if it was said. It seems to me to reflect the main thrust of the contract Mr and Mrs L entered into. And while, under Rules 9.1 and 9.2.9 of the relevant Fractional Club Rules, the sale of the Allocated Property could be postponed for up to two years by the 'Vendor',[1] longer than that if there were problems selling and the 'Owners'[2] 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 points 2 and 3, neither of them strike me as misrepresentations even if such representations 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

[1] Defined in the FPOC Rules as "CLC Resort Developments Limited".
[2] 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)."

prospective members that they would receive some money when the allocated property is sold. After all, a share in an allocated property was clearly the purchase of 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.

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

Section 75 of the CCA: the Supplier's breach of contract

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

Mr and Mrs L say that they could not holiday where and when they wanted to. That was framed, in the Letter of Complaint, as part of their complaint about the fairness or otherwise of their credit relationship with the Lender under section 140A of the CCA. 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 and Mrs L states that the availability of holidays was/is subject to demand. It also looks like they made use of their fractional points to holiday on a number of occasions. I accept that they may not have been able to take certain holidays. But I have not seen enough to persuade me that the Supplier had breached the terms of the Purchase Agreement.

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

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

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

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

1. The standard of the Supplier's commercial conduct – which includes its sales and marketing practices at the Times 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; and
4. The inherent probabilities of the sales given their circumstances.

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

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

Mr and Mrs L'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 L and carried on unfair commercial practices under regulations 5 and 6 of the CPUT regulations.[3] 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 L to make the purchasing decision they did, I'm not persuaded that anything done or not 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 says that:

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

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

I haven't seen anything to persuade me that the right checks weren't carried out by the Lender given this complaint's circumstances. But even if I were to find that the Lender failed to do everything it should have when it agreed to lend (and I make no such finding), I would have to be satisfied that the money lent to Mr and Mrs L 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 L.

I acknowledge that Mr and Mrs L may have felt weary after a sales process that went on for a long time. But they say little about what was said and/or done by the Supplier during their sales presentation 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. And with all of that being the case, there is insufficient

[3] The Consumer Protection from Unfair Trading Regulations 2008.

evidence to demonstrate that Mr and Mrs L made the decision to purchase Fractional Club membership because their ability to exercise that choice was significantly impaired by pressure from the Supplier.

Overall, therefore, I don't think that Mr and Mrs L'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 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 a 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 L'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 L say that the Supplier did exactly that at the Time 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 Property clearly constituted an investment as it offered Mr and Mrs L 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 L 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 Time of Sale as an investment in breach of regulation 14(3) of the Timeshare Regulations.

On the one hand, it is clear that the Supplier made efforts to avoid specifically describing

membership of the Fractional Club as an 'investment' or quantifying to prospective purchasers, such as Mr and Mrs L, the financial value of their share in the net sales proceeds of the Allocated Property along with the investment considerations, risks and rewards attached to them.

On the other hand, I acknowledge that the Supplier's sales process left open the possibility that the sales representative may have positioned Fractional Club membership as an investment. So, I accept that it's equally possible that Fractional Club membership was marketed and sold to Mr and Mrs L 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.

The PR has argued that I should give more weight to the training materials which the Supplier used to train its staff. But I don't think it's necessary to say more about that, because that is only relevant to whether there was a breach of regulation 14(3) (and I accept that there may have been). It does not shed light on whether that breach caused unfairness in the credit relationship between the Lender and Mr and Mrs L – which is the issue I turn to next.

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

Having found that it was possible that the Supplier breached regulation 14(3) of the Timeshare Regulations at the Time of Sale, I now need to consider what impact that breach had on the fairness of the credit relationship between Mr and Mrs L 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 and Mrs L and the Lender that was unfair to them and warranted relief as a result, then an important consideration is whether the Supplier's breach of regulation 14(3) led them to enter into the Purchase Agreement and the Credit Agreement.

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 and Mrs L decided to go ahead with their purchase, for essentially the same reasons Mr Morgan gave in his own decision. In both of their joint witness statements, Mr and Mrs L seem to have mainly been motivated by the desire for better holidays, and by having a contract of finite duration after which their liabilities would end. The possibility of a profit was not an important factor in their decision to purchase.

That doesn't mean they weren't interested in a share in the Allocated Property. After all, that wouldn't be surprising given the nature of the product at the centre of this complaint. But as Mr and Mrs L themselves don't persuade me that their purchase was really motivated by their share in the Allocated Property and the possibility of a profit, I don't think a breach of regulation 14(3) by the Supplier was likely to have been material to the decision 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 and Mrs L's decision to purchase Fractional Club membership at the Time of Sale was motivated by the prospect of a financial gain (i.e., a profit). On the contrary, I think the evidence suggests 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 relationship between Mr and Mrs L and the Lender was unfair to them even if the Supplier had breached regulation 14(3).

The PR has made two further points about this issue. Firstly, they say (correctly) that the burden of proof is on the Lender to show that the credit relationship is *not* unfair; their clients do not have to prove anything. I agree (see section 140B(9) of the CCA), but for the reasons I have given above I think that the weight of the evidence in this case leans strongly to the investment element not having made a difference to Mr and Mrs L's decision to purchase.

Secondly, they quote a passage from paragraph 75 of the judgement of the High Court in *Shawbrook Bank Limited v Financial Ombudsman Service* [2023] EWHC 1069 (Admin), which the PR argues demonstrates that the investment opportunity does not have to be the main reason for a consumer's decision to purchase. However, having read that judgement, and in particular paragraphs 71 to 76, I think the PR has taken the quoted passage out of context and has misunderstood it. The passage is not the judge's own opinion; it is the judge's summary of the losing party's lawyer's argument, which the judge rejected. So this actually vindicates my colleague's approach to the evidence in this case, which is also the approach I have followed here.

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

The PR says that Mr and Mrs L 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 L 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 L 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 facts 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 L 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.

Commission

In November 2024 Mr and Mrs L's personal representative ("the PR") asserted on behalf of Mr and Mrs L that the payment of commission made the financial arrangement unfair. The PR didn't give a level of commission at which it considered unfairness arose, but its arguments included the following:

- Despite requests, there had been no disclosure of the actual amount of commission paid by the Lender to the Supplier;
- per the Court of Appeal's judgment in *Johnson*[4], the percentage of commission should be based upon "*the sum borrowed"*;
- the amount of the annual percentage rate of interest ("APR") is key and was unusually high, substantially increasing the total charge for credit;
- commission paid by the Supplier to its self-employed sales representatives should also be disclosed and taken into account in the calculation used to determine unfairness.

Did the commission arrangements render the credit relationship unfair?

My reading of the Supreme Court's judgment in *Hopcraft, Johnson and Wrench* is that it sets out principles which can apply to credit brokers other than car dealer–credit brokers. So I've taken into account those principles when considering the allegations of undisclosed payments of commission in this complaint.

In *Hopcraft, Johnson and Wrench* the Supreme Court ruled that, in each of the three cases, commission payments made to car dealers by lenders were legal, as claims for the tort of bribery, or for 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 & others 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:

- 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";* [5]
- The failure to disclose the commission; and
- The concealment of the commercial tie between the car dealer and the lender.

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[4] The PR's submission references the Court of Appeal judgment (*Johnson v FirstRand Bank Limited, Wrench v FirstRand Bank Limited and Hopcraft v Close Brothers* [2024] EWCA Civ 1106 *("Johnson"*)). The Supreme Court has since handed down its judgment clarifying the position in law: see the judgment handed down on 1 August 2025 in *Johnson v FirstRand Bank Ltd, Wrench v FirstRand Bank Ltd and Hopcraft v Close Brothers Ltd* [2025] UKSC 33 ("*Hopcraft, Johnson and Wrench*").

[5] *Hopcraft, Johnson and Wrench* (paragraph 327).

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:

- The size of the commission as a proportion of the charge for credit;
- The way in which commission is calculated (a discretionary commission arrangement, for example, may lead to higher interest rates);
- The characteristics of the consumer;
- 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
- Compliance with the regulatory rules.

After careful consideration, I don't think *Hopcraft, Johnson and Wrench* assists Mr and Mrs L in arguing that their credit relationship with the Lender was unfair to them for reasons relating to commission, given the facts and circumstances of this complaint.

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

I recognise 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 noted in my provisional decision, case law on section 140A makes clear that regulatory breaches do not automatically lead to an unfair credit relationship, and that such breaches and any consequences must be considered in the round rather than in a narrow or technical way.

With that being the case, even if the Lender and the Supplier failed to follow the relevant regulatory guidance at the Time of Sale, I'm not minded to think any such failure is itself a reason to find the credit relationship in question unfair to Mr and Mrs L. I say this for the following reasons.

In stark contrast to the facts in Mr Johnson's case, the amount of commission paid by the Lender to the Supplier for arranging Mr and Mrs L's Credit Agreement wasn't high. At £1,069:40 it was only 10% of the amount borrowed and even less than that (8.84%) as a proportion of the charge for credit, which is the calculation the Supreme Court used.

Had Mr and Mrs L known at the Time of Sale that the Supplier was going to be paid a flat rate of commission at this level, I'm not currently persuaded that they either wouldn't have understood that or would have otherwise questioned the size of the payment at that time. After all, Mr and Mrs L wanted Fractional Club membership and had no obvious means of their own to pay for it. And at such a low level, the impact of commission on the cost of the credit they needed for a timeshare they wanted doesn't strike me as disproportionate. So I think they would still have taken out the loan to fund their 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. As it wasn't acting as an agent of Mr and Mrs L but as the supplier of contractual rights they 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 them when arranging the Credit Agreement and thus a fiduciary duty.

I don't consider it necessary for me to take into account any commission the Supplier might have paid to its sales representatives, or that this should be disclosed or factored into any calculation used to determine unfairness. Even if any such arrangement was in place (and I make no finding in this respect), its disclosure and/or payment would be further removed from any obligations the Supplier might have held, and even less likely to have an impact on Mr and Mrs L's decision to enter into the Credit Agreement.

Overall, I'm don't intend to conclude 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 and Mrs L.

So, given all of the factors I've looked at both here and in my provisional decision, and having taken all of them into account, I'm still not persuaded that the credit relationship between Mr and Mrs L and the Lender under the Credit Agreement and related Purchase Agreement was unfair to them. And as things currently stand, I don't think it would be fair or reasonable that I uphold this complaint on that basis.

Commission: alternative grounds of complaint

Although the PR's submissions expressed the view that payment of commission made the financial arrangements unfair, I'm conscious that there might be some alternative grounds that could constitute separate and freestanding complaints to Mr and Mrs L's allegation of an unfair credit relationship.

The first ground relates to whether the Lender is liable for the dishonest assistance of a breach of fiduciary duty by the Supplier because the Supplier took a payment of commission from the Lender without telling Mr and Mrs L (that is, secretly). But given I'm not persuaded the Supplier – when acting as credit broker – owed Mr and Mrs L a fiduciary duty, I can't see how I could properly uphold on this ground.

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 it and the Supplier. As I've said, it's possible that the Lender failed to follow the relevant regulatory guidance. But I don't think any such failure on the Lender's part leads to my awarding compensation to Mr and Mrs L because, for the reasons I also set out above, I think Mr and Mrs L would still have taken out the loan to fund their purchase at the Time of Sale had the commission arrangements been adequately disclosed at that time.

Conclusion

In conclusion, as things currently stand, I do not think that the Lender acted unfairly or unreasonably when it dealt with the relevant section 75 claim, and I am not persuaded that the Lender was party to a credit relationship with Mr and Mrs L under the Credit Agreement that was unfair to them for the purposes of section 140A of the CCA – nor do I see any other reason why it would be fair or reasonable to direct the Lender to compensate them.

Responses to my provisional findings

The Lender accepted my provisional decision. The PR didn't accept the proposed outcome. It submitted further comments and evidence in support of Mr and Mrs L's position.

Having received and reviewed these, I'm now proceeding with my final decision.

The legal and regulatory context

The legal and regulatory context that I think is relevant to this complaint has been shared in several hundred published decisions on very similar complaints, as well as in previous correspondence with the parties. So there's no need for me to set this out again in detail here. I simply remind the parties that our rules[6] 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, I find it offers no persuasive reason to depart from the conclusions I've previously set out. I'll explain why.

The PR's response to my provisional decision relates mainly to the issue of whether the credit relationship between Mr and Mrs L 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 L 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 L. And it has repeated and elaborated on the allegations about failing to carry out affordability checks, misleading Mr and Mrs L about a guaranteed end date, wrongly describing what was being sold as a share of real property when it was only a share of the proceeds of the sale, and high pressure sales tactics. It also reiterated what it had said about breaches of contract.

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 and Mrs L 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 and Mrs L as an investment, in breach of

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

regulation 14(3). I went on to explain that relevant case law[7] 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 and Mrs L'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 *Shawbrook and BPF v FOS*[8] or previous decisions the PR has mentioned.

While the PR has referred me to Mr and Mrs L'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 and Mrs L's purchase decision would have been any different, given the other motivational factors they had described. Having re-examined Mr and Mrs L's statement that remains my view, for the reasons previously given.

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 L'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 L 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 evidence the commission arrangements. As the PR will be aware, 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). 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'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.

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

- The provisional decision doesn't properly apply the Supreme Court's judgment in *Hopcraft, Johnson and Wrench,* which concluded a range of factors informed whether a credit relationship between a consumer and a lender was unfair;
- A conflict of interest existed on the part of the Supplier, who provided neither independent nor competent explanation of the Credit Agreement;
- Failure to disclose payment of commission – irrespective of the size of any payment – was a regulatory breach that goes to the heart of fairness.

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

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[7] *Carney* and *Kerrigan*

[8] Indeed, paragraph 185 of *Shawbrook and BPF v FOS* appears to endorse this approach.

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 L'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 L'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 L, any persuasive reasons to conclude that the Supplier's role was that of advisor to Mr and Mrs L, 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.

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. I remain of that view, the PR's submissions notwithstanding.

Other causes of unfairness

I still haven't seen anything to persuade me that the right checks weren't carried out by the Lender, or that the loan was unaffordable. However, I have seen the loan application form, which includes information about Mr L's income, employer and mortgage, so I think that he was asked questions about his finances at the Time of Sale.

I appreciate that the 19-year term of the Fractional Club membership could not guaranteed to be precisely 19 years to the day, because of the possibility (or indeed the likelihood) that the Allocated Property might not be sold at once. And I acknowledge that at the Time of Sale, Mr and Mrs L would not have known what Rule 9 of the Fractional Club Rules said. However, I still think that as it is obviously impossible to guarantee precisely on which date a property will be sold, consumers would not have understood the guarantee quite as literally or as precisely as meaning that the Allocated Property would be sold on the Sale Date, but that the sales process would *begin* on that date. So I remain unconvinced that this was a real misrepresentation, because (i) it was still broadly true, and (ii) if the salesperson had told Mr and Mrs L that the sale of the Allocated Property would not complete on the Sale Date, but that it would be put on the market on that date, it's more likely than not that they would still have entered into the Purchase Agreement.

I don't think that the distinction between owning a share of a freehold (or Spanish equivalent) of a property and being the beneficiary of a trust which holds and then sells the property for the benefit of the beneficiaries is as significant as the PR suggests. It does not change the fact that Mr and Mrs L owned a joint share in a specific Allocated Property which was identified on their Purchase Agreement, and that they would receive their share of the sale proceeds when it was sold.

Finally, I remain of the view that the 14-day cooling-off period cures any unfairness that might otherwise result from any high pressure sales tactics.

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 L and the Lender under the Credit Agreement and related Purchase Agreement was 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 and Mrs L (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 L 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.

Section 75: breaches of contract

The PR argues that the unavailability of holiday accommodation was systemic. However, it was not the case that Mr and Mrs L were unable to go on holidays provided by the Supplier. They may have needed to book far in advance, or they may not have always got their first choice, but I don't think that is serious enough to amount to an actionable breach of contract. So I remain of the view that the Lender was entitled to reject their section 75 claim.

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 L's section 75 claim. And (keeping in mind the burden of proof on the Lender under section 140B) I'm still not satisfied that the Lender was party to a credit relationship with Mr and Mrs L 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 L.

My final decision

For the reasons set out above, my final decision is that I do not uphold this complaint.

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

Richard Wood
Ombudsman