

The complaint

Miss B's complaint is, in essence, that Tandem Bank Limited (the 'Lender') acted unfairly and unreasonably by (1) being party to an unfair credit relationship with her 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.

What happened

Miss B and Mr P were trial members of a timeshare provider (the 'Supplier') – having previously purchased a trial membership. But the product at the centre of this complaint is their membership of a timeshare that I'll call the 'Fractional Club' – which they bought on 27 May 2019 (the 'Time of Sale'). They entered into an agreement with the Supplier to buy 1,390 fractional points at a cost of £17,968 (the 'Purchase Agreement').

Fractional Club membership was asset backed – which meant it gave Miss B and Mr P 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 the end of their membership term.

Miss B and Mr P paid for their Fractional Club membership by taking finance of £20,532 from the Lender in Miss B's name (the 'Credit Agreement'). The amount of finance exceeded the purchase price as Miss B and Mr P consolidated the loan taken to fund their trial membership into this loan.

As the finance used for the purchase was in Miss B's sole name, only she is eligible to bring this complaint. Hereafter, I shall only refer to Miss B.

Miss B – using a professional representative (the 'PR') – wrote to the Lender on 6 September 2022 (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 Miss B's concerns as a complaint and issued its final response letter on 31 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. Miss B disagreed with the Investigator's assessment and asked for an Ombudsman's decision – which is why it was passed to me.

I considered the matter and issued a provisional decision (the 'PD') dated 18 November 2025. In that decision, 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.

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 Miss B was:

1. Told that she had purchased an investment that would "considerably appreciate in value".
2. Promised a considerable return on her investment because she was told that she would own a share in a property that would considerably increase in value.
3. Told that she could sell her Fractional Club membership to the Supplier or easily to third parties at a profit.
4. Made to believe that she would have access to "the holiday apartment" at any time all year round.

However, neither points 1 nor 2 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. And even if the Supplier's sales representatives went further and suggested that the share in question would increase in value, perhaps considerably so, that sounds like nothing more than an honestly held opinion as there isn't any accompanying evidence to persuade me that the relevant sales representative(s) said something that, while an opinion, amounted to a statement of fact that they did not hold or could not have reasonably held.

As for points 3 and 4, while it's *possible* that Fractional Club membership was misrepresented at the Time of Sale for one or both of those reasons, I don't think it's *probable*. They're given little to none of the colour or context necessary to demonstrate that the Supplier made false statements of existing fact and/or opinion. And as there isn't any other evidence on file to support the suggestion that Fractional Club membership was misrepresented for these reasons, I don't think it was.

So, while I recognise that Miss B – 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 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 Miss B 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; and, when relevant
5. Any existing unfairness from a related credit agreement.

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

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

Miss B's complaint about the Lender being party to an unfair credit relationship was made for several reasons.

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

Connected to this is the suggestion by the PR that the Credit Agreement was arranged by an unauthorised credit broker, the upshot of which is to suggest that the Lender wasn't permitted to enforce the Credit Agreement. However, it looks to me like Miss B knew, amongst other things, how much she was borrowing and repaying each month, who she was borrowing from and that she was borrowing money to pay for Fractional Club membership. And as the lending doesn't look like it was unaffordable for her, even if the Credit Agreement was arranged by a broker that didn't have the necessary permission to do so (which I make no formal finding on), I

can't see why that led to Miss B experiencing a financial loss – such that I can say that the credit relationship in question was unfair on her 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 her, even if the loan wasn't arranged properly.

The PR also says that there were one or more unfair contract terms in the Purchase Agreement. But as I can't see that any such terms were operated unfairly against Miss B in practice, nor that any such terms led her to behave in a certain way to her detriment, 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.

I acknowledge that Miss B may have felt weary after a sales process that went on for a long time. But she says little about what was said and/or done by the Supplier during her sales presentation that made her feel as if she had no choice but to purchase Fractional Club membership when she simply did not want to. She was also given a 14-day cooling off period and has not provided a credible explanation for why she did not cancel her membership during that time. And with all that being the case, there is insufficient evidence to demonstrate that Miss B made the decision to purchase Fractional Club membership because her ability to exercise that choice was significantly impaired by pressure from the Supplier.

Overall, therefore, I don't think that Miss B's credit relationship with the Lender was rendered unfair to her under Section 140A for any of the reasons above. But there is another reason, perhaps the main reason, why the PR says the credit relationship with the Lender was unfair to her. And that's the suggestion that Fractional Club membership was marketed and sold to her as an investment in breach of 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 Miss B's Fractional Club membership met the definition of a "timeshare contract" and was a "regulated contract" for the purposes of the Timeshare Regulations.

Regulation 14(3) of the Timeshare Regulations prohibited the Supplier from marketing or selling 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 says that the Supplier did exactly that at the Time of Sale – saying, in summary, that Miss B was 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 Miss B the prospect of a financial return – whether or not, like all investments, that was more than what she first put into it. But it's 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 Miss B as an investment in breach of Regulation 14(3), I have to be persuaded that it was more likely than not that the Supplier marketed and/or sold membership to her as an investment, i.e. told her or led her to believe that Fractional Club membership offered her the prospect of a financial gain (i.e. a profit) given the facts and circumstances of *this* complaint.

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's 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 Miss B, the financial value of their share in the net sales proceeds of their allocated property along with the investment considerations, risks and rewards attached to it.

On the other hand, I acknowledge that the Supplier's sales process left open the possibility that the sales representative(s) may have positioned Fractional Club membership as an investment. So, I accept that it's also possible that Fractional Club membership was marketed and sold to Miss B as an investment in breach of Regulation 14(3).

However, whether or not there was a breach of the relevant prohibition by the Supplier is not ultimately determinative of the outcome in this complaint for reasons I will come on to shortly. And with that being the case, it's not necessary to make a formal finding on that particular issue for the purposes of this decision.

Was the credit relationship between the Lender and Miss B 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 Miss B 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 Miss B and the Lender that was unfair to her and warranted relief as a result, whether the Supplier's breach of Regulation 14(3) led her to enter into the Purchase Agreement and the Credit Agreement is an important consideration.

Following the Investigator's view that Miss B's complaint should not be upheld, the PR provided a statement containing her recollections of the Time of Sale: This says:

“[...] it sounded like a ‘win win’ to us and we felt like we had to take for fear of missing a good investment opportunity. We were told if we signed that day, we would be sold a share in the property and after the duration of the contract (19 years) the property would be sold and we would receive our proportion of the sale.”

But it was only after the Investigator issued their view, and after 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 & BPF v FOS’*) was handed down, that Miss B recalled that the Supplier led her to believe that Fractional Club membership offered her the prospect of a financial gain. And as 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, I find it difficult to understand why the Financial Ombudsman Service was only given such evidence when it was.

I note that Miss B’s recollections are indeed brief, and she provides limited information on the circumstances of the sale. She has not, for example, provided details of where the sales presentation took place or who exactly she spoke with.

The Letter of Complaint, which was sent prior to the judgment in *Shawbrook & BPF v FOS*, does say that Fractional Club membership was sold to Miss B as an investment. But as the PR has made the same allegations in the same way on a significant number of complaints, I am not persuaded these were tailored based on individual comments Miss B made around the time the Letter of Complaint was sent.

Indeed, as there isn’t any other evidence on file to corroborate Miss B’s very recent evidence about her motivations at the Time of Sale, there seems to me to be a very real risk that her recollections were coloured by the judgment in *Shawbrook & BPF v FOS*. And with that being the case, I’m not persuaded that I can give her written recollections the weight necessary to find that the credit relationship in question was unfair for reasons relating to a breach of the relevant prohibition.

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 Miss B’s decision to purchase Fractional Club membership at the Time of Sale was motivated by the prospect of a financial gain (i.e. a profit). And for that reason, I do not think the credit relationship between Miss B and the Lender was unfair to her even if the Supplier had breached Regulation 14(3).

Miss B’s commission complaint

I note that one of Miss B’s other concerns relates to alleged payments of commission by the Lender to the Supplier for acting as a credit broker and arranging the Credit Agreement. The Supreme Court’s recent judgment *Johnson v FirstRand Bank Ltd, Wrench v FirstRand Bank Ltd and Hopcraft v Close Brothers Ltd* [2025] UKSC 33 (*‘Johnson, Wrench and Hopcraft’*) clarified the law on payments of commission – albeit in the context of car dealers acting as credit brokers. In my view, the Supreme Court’s judgment sets out principles which appear capable of applying to credit brokers other than car dealer credit brokers. So, once I understand the commission arrangements relevant to Miss B’s complaint, I will address this aspect of the complaint before finalising my thoughts overall.”

In conclusion, as things stood at the time, I did not think that the Lender acted unfairly or unreasonably when it dealt with Miss B's Section 75 claim, and I was not persuaded that the Lender was party to a credit relationship with her under the Credit Agreement that was unfair to her for the purposes of Section 140A of the CCA – nor did I see any other reason why it would be fair or reasonable to direct the Lender to compensate her. However, it was necessary to find out more about the commission arrangements at the Time of Sale before finalising my thoughts on the merits of her complaint.

The PR responded that it did not accept the PD and provided some further comments and evidence to be considered. The Lender accepted the PD and had no further comments.

After receiving information from the Lender on the commission arrangements in place at the Time of Sale, I set out my thoughts on these to both parties on 19 January 2026. I said:

“In my provisional decision, I explained that I needed to understand the commission arrangements in place at the Time of Sale before finalising my thoughts on the merits of Miss B's complaint.

I now have information on the arrangements. So, I'm outlining my thoughts on the issue in this letter so that both parties have the opportunity to respond before I finalise my decision.

The legal and regulatory context

In considering what is fair and reasonable in all the circumstances of the complaint, I am required under DISP 3.6.4 R 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.

In my provisional decision, I explained that the legal and regulatory context that I think is relevant to this complaint is, in many ways, no different to that shared in several hundred published ombudsman decisions on very similar complaints – which can be found on the Financial Ombudsman Service's website. And with that being the case, it was not necessary to set out that context in detail. But, following my provisional decision, I would add that the following regulatory rules/guidance are also 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

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

The PR 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 FCA's Dispute Resolution rules ('DISP').

But I don't think *Hopcraft, Johnson and Wrench* assists Miss B in arguing that her credit relationship with the Lender was unfair to her 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 Miss B, nor have I seen anything that persuades me that the commission arrangement between them gave the Supplier a choice over the interest rate that led her 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's for the reasons set out below that I don't currently think any such failure is itself a reason to find the credit relationship in question unfair to Miss B.

In stark contrast to the facts of Mr Johnson's case, the amount of commission paid by the Lender to the Supplier for arranging the Credit Agreement that Miss B entered into wasn't high. At £513.30, 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, had she 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 currently persuaded that she either wouldn't have understood that or would have otherwise questioned the size of the payment at that time. After all, Miss B wanted Fractional Club membership and had no obvious means of her own to pay for it. And at such a low level, the impact of commission on the cost of the credit she needed for a timeshare she wanted doesn't strike me as disproportionate. So, I think she would still have taken out the loan to fund her 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 Miss B but as the supplier of contractual rights she obtained under the Purchase Agreement, the transaction doesn't strike me as one with features that suggest the Supplier had an obligation of 'loyalty' to her when arranging the Credit Agreement and thus a fiduciary duty.

Overall, therefore, I'm not currently 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 Miss B.

So, given all 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 Miss B and the Lender under the Credit Agreement and related Purchase Agreement was unfair to her. And as things currently 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 provisionally found that Miss B's credit relationship with the Lender wasn't unfair to her 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 Miss B's 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 Miss B (i.e. secretly). And the second relates to the Lender's compliance with the regulatory guidance in place at the Time of Sale insofar as it was relevant to disclosing the commission arrangements between them.

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

The business acknowledged the correspondence, but the PR did not respond. I am now in a position to finalise my decision.

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.

I've considered the case afresh in light of the responses from the parties. Having done so, I've reached the same findings as that which I outlined in my PD and further correspondence regarding the commission arrangements, for broadly the same reasons.

Again, 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 PD only relate to the issue of whether the credit relationship between Miss B and the Lender was unfair. In particular, the PR has provided further comments in relation to whether the membership was sold to Miss B as an investment at the Time of Sale. It also argued for the first time that a contradiction in the purchasing documentation led to an unfair credit relationship.

As outlined in my PD, the PR originally raised various other points of complaint, which I addressed as far as was possible at that time. But it hasn't made any further comments in relation to those in its response to my PD, nor has it responded to my correspondence about the commission arrangements at the Time of Sale. Indeed, it hasn't said it disagrees with any of my findings about those other points. And since I haven't been provided with anything more in respect of those points by either party, I see no reason to change my conclusions about them. So, I'll focus here on the PR's points raised in response to my PD that I haven't yet addressed.

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 explained in its response to my PD that it hadn't shared the Investigator's view with Miss B "in order to not influence [her] recollections". It said this means her recollections haven't been influenced by either the Investigator's view or the judgment in *Shawbrook & BPF v FOS*.

Part of my assessment of the testimony was to consider *when* it was written, and whether it may have been affected by external factors such as the widespread publication of the outcome of *Shawbrook and BPF v FOS*.

I have thought about what the PR has said, but on balance, I don't find it a credible explanation of the contents of Miss B's evidence. Here, the PR responded to the Investigator's view to say that Miss B alleged that Fractional Club membership had been sold to her as an investment and it provided evidence from her to that effect. I fail to understand how Miss B disagreed with the view on the basis that the timeshare was sold as an investment if she did not know our Investigator's conclusions. It follows, I think it more likely than not, that she did know about our Investigator's view before the evidence was provided.

I therefore maintain that there is a risk that Miss B's testimony was coloured by the Investigator's view and/or the outcome in *Shawbrook & BPF v FOS*. And, on balance, the way in which the evidence has been provided makes me conclude that I can place little weight on it.

The PR said that as the Supplier's pricing sheet refers to the "Unit share %" provided under Miss B's Fractional Club membership, this shows the investment element was an "important part" of the sales process and "played quite an important role" in her purchasing decision. But I don't agree. As I explained in my PD, it is not in dispute that Fractional Club membership contained an investment element and it's possible that it was marketed or sold to Miss B as an investment (although I have made no finding on this). However, the simple fact that her share in the Allocated Property was recorded on the pricing sheet does not offer an insight into her motivation for her purchase.

The PR also said that in the judgment handed down in *Shawbrook & BPF v FOS*, it was not challenged that the product in question was marketed and sold as an investment. But, as I explained in my PD, the Timeshare Regulations did not ban products such as the Fractional Club. They just regulated how such products were marketed and sold. And the judgment referred to did not make a blanket finding that all such products were mis-sold in the way the PR appears to be suggesting. Any complaint needs to be considered in light of its specific circumstances.

So, even if the Supplier had marketed or sold the membership as an investment in breach of

Regulation 14(3) (which I still make no finding on here), I'm not persuaded Miss B's decision to make the purchase was motivated by the prospect of a financial gain. And for that reason, I still don't think the credit relationship between Miss B and the Lender was unfair to her.

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

I will also address the PR's point regarding the apparent ambiguity in the proposed sale date of the Allocated Property. The PR suggests that a delayed sale date could lead to an unfairness to Miss B in the future, as any delay could mean a delay in the realisation of her share in the Allocated Property.

It does appear that the proposed date for the commencement of the sales process, as set out on the owners' certificate, is 31 December 2036. The same date is set out under point 1 of the Member's Declaration, which has been initialled and signed as being read by Miss B. This date indicates that the membership has a term of 17 years from the first year of occupancy. The ambiguity identified by the PR is that in the Information Statement provided as part of the purchase documentation it says the following:

"The Owing Company will retain such Allocated Property until the automatic sale date in **19 years time** or such later date as is specified in the Rules or the Fractional Rights Certificate."

[my emphasis]

It seems clear to me that the commencement date for the start of the sales process is 31 December 2036. This actual date is repeated in the sales documentation as I've set out above. So, I can't see that this is a reason to find the credit relationship unfair and uphold this complaint.

S140A 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 Miss B and the Lender under the Credit Agreement and related Purchase Agreement was unfair to her. So, I don't think it's fair or reasonable that I uphold this complaint on that basis.

Overall conclusion

In conclusion, given the facts and circumstances of this complaint, I do not think that the Lender acted unfairly or unreasonably when it dealt with Miss B's Section 75 claim, and I am not persuaded that the Lender was party to a credit relationship with her under the Credit Agreement that was unfair to her for the purposes of Section 140A of the CCA. And having taken everything into account, I see no other reason why it would be fair or reasonable to direct the Lender to compensate her.

My final decision

My final decision is to not uphold Miss B's complaint about Tandem Bank Limited for the reasons provided.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss B to accept or reject my decision before 4 March 2026.

Alex Salton
Ombudsman