

## The complaint

Mr B's complaint is, in essence, that First Holiday Finance Ltd (the 'Lender') 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') and (2) deciding against paying claims under Section 75 of the CCA.

## What happened

Mr B<sup>1</sup> was a member of a timeshare provider (the 'Supplier') – having purchased a number of products from it over time. 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 2 March 2016 (the 'Time of Sale'). He entered into two agreements with the Supplier to buy 1,420 annual fractional points at a cost of £9,135 and 1,420 biannual (odd year) fractional points at a cost of £5,736 (the 'Purchase Agreements') after trading in some of his existing timeshares – giving a total amount due of £14,871.

Signature Collection membership was asset backed – which meant it gave Mr B more than just holiday rights. It also included a share in the net sale proceeds of a property named on the Purchase Agreement (the 'Suite') after his membership term ends. And, unlike other timeshares available from the Supplier which he had purchased previously, the right to stay in the Suite at specific times shown on the Purchase Agreements.

Mr B paid for his Signature Collection membership by taking finance of £13,871 from the Lender (the 'Credit Agreement') after paying £1,000 directly.

Mr B – using a professional representative (the 'PR') – wrote to the Lender on 15 May 2024 (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 this 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 B's concerns as a complaint and issued its final response letter on 28 May 2024, rejecting it on every ground.

The complaint was then referred to the Financial Ombudsman Service. It was assessed by an Investigator who, having considered the information on file, rejected the complaint on its merits. Mr B 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 in more detail why I was not planning to uphold the complaint.

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<sup>1</sup> In this decision I refer mainly to Mr B. Although Signature Collection membership was purchased by Mr and Mrs B at the Time of Sale, the Credit Agreement is in Mr B's name only. This means only he is eligible to complain about it. Where I refer to Mr B in this decision, this can be taken to mean Mr and Mrs B where appropriate – such as when I am referring to their Signature Collection membership.

The Lender responded to say that it accepted this and had nothing further to add.

The PR responded to say that it disagreed with some parts of my provisional decision, and provided some comments and documents it wanted me to consider when making my final 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 3.6.4R 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.

### 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 and having done so, I've reached the same decision as that which I outlined in my provisional findings, a copy of which is below, for broadly the same reasons. That is, I do not uphold this complaint.

START OF COPY OF PROVISIONAL FINDINGS

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

As a general rule, creditors can reasonably reject Section 75 claims that they are first informed about after the claim has become time-barred under the Limitation Act 1980 (the 'LA') as it wouldn't be fair to expect creditors to look into such claims so long after the liability arose and after a limitation defence would be available in court. So, it is relevant to consider

whether M B's Section 75 claim for misrepresentation was time-barred under the LA before he put it to the Lender.

As I mentioned above, a claim under Section 75 is a "like" claim against the creditor. It essentially mirrors the claim M B could make against the Supplier.

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

But a claim, like the one in question here, under Section 75 is also 'an action to recover any sum by virtue of any enactment' under Section 9 of the LA. And the limitation period under that provision is also six years from the date on which the cause of action accrued.

The date on which the cause of action accrued was the Time of Sale. I say this because M B entered into the purchase of his timeshare at that time based on the alleged misrepresentations of the Supplier – which he [say/says] were relied upon. And as the loan from the Lender was used to help finance the purchase, it was when he entered into the Credit Agreement that he suffered a loss.

M B first notified the Lender of his Section 75 claim on 15 May 2024. And as more than six years had passed between the Time of Sale and when that claim was first put to the Lender, I don't think it was unfair or unreasonable of the Lender to reject M B's concerns about the Supplier's alleged misrepresentations.

### **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.

The PR says that Mr B derived no benefit from Signature Collection membership in terms of holidays – since he could not get the holidays he wanted. On my reading of the complaint, this suggests that the Supplier was not living up to its end of the bargain, meaning it could be viewed as potentially breaching the Purchase Agreement. It is not clear precisely when this was alleged to have happened, but if it happened within six years of the time the complaint was first made, such a claim would not have been made too late under the LA.

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 M B states that the availability of holidays was/is subject to demand. It also looks like he made use of their fractional points to holiday on a number of occasions. I accept that he 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 M B 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 B 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 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. The commission arrangements between the Lender and the Supplier at the Time of Sale and the disclosure of those arrangements;
4. Evidence provided by both parties on what was likely to have been said and/or done at the Time of Sale;
5. The inherent probabilities of the sale given its circumstances; and
6. 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 B and the Lender.

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

Mr B'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 B were 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 B.
3. The Credit Agreement did not provide the required information about what the loan was for (which the PR says included consolidating a previous loan).

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

I acknowledge that Mr B 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 their 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. They were also given a 14-day cooling off period and Mr B has 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 B 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 B 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 B.

The PR says that the Credit Agreement did not include the necessary information about what it was paying for (that it was two separate Purchase Agreements and was consolidating another loan), the upshot of which is to suggest that the Lender wasn't permitted to enforce the Credit Agreement. However, it looks to me like Mr B knew, amongst other things, how much he was borrowing and repaying each month, who he was borrowing from, and that he was borrowing money to pay for Signature Collection membership. While information about the two Purchase Agreements was not shown separately on the Credit Agreement, Mr B had signed both Purchase Agreements individually, so was aware what the loan was paying for. The total price shown on the Credit Agreement covered both those purchases.

In addition, the loan was only used to cover those purchases and was not used to consolidate an existing loan. The lending doesn't look like it was unaffordable for Mr B, so 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 B experiencing a financial loss – such that I can say that the credit relationship in question was unfair to 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 Mr B, even if the Credit Agreement did not provide all the information it should have.

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

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

The Lender does not dispute, and I am satisfied, that Mr B'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 B 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 Suite clearly constituted an investment as it offered Mr B the prospect of a financial return – whether or not, like all investments, that was more than what they first put into it. But it is important to note at this stage that the fact that 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*.

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 B as an investment in breach of Regulation 14(3), I have to be persuaded that it was more likely than not that the Supplier marketed and/or sold membership to them as an investment, i.e. told them or led them to believe that Signature Collection 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 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, it is clear that the Supplier made efforts to avoid specifically describing membership of the Signature Collection as an 'investment' or quantifying to prospective purchasers, such as Mr B, the financial value of their share in the net sales proceeds of the Suite 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 Signature Collection membership as an investment. So, I accept that it's equally possible that Signature Collection membership was marketed and sold to Mr 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.

Would the credit relationship between the Lender and Mr B have been rendered unfair to him had there been a breach of Regulation 14(3) of the Timeshare Regulations?

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 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 Mr B and the Lender that was unfair to them and warranted relief as a result, it is important to consider 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, there is insufficient evidence for me to conclude that the prospect of a financial gain from Signature Collection membership was an important and motivating factor when Mr B decided to go ahead with their purchase. I say this for the following reasons.

The PR has provided a handwritten call note dated 10 March 2020, which it says was made during a call with Mr B. This notes that Mr B had purchased timeshares in 2012, 2014, 2015, 2016 and 2018. That *“they upgraded every time and traded in previous timeshare”,* and *“why purchase? Upgrade? \*profit when finish the loan as they could sell and take the money back + extra, as the value will increase \* better holidays in different resorts/country \* better holidays on school time off and retirement.”*

Given this discussion took place in 2020, it is unclear why Mr B did not make his claim to the Lender until over four years later.

While the call note suggests a reason Mr B entered the Purchase Agreements at the Time of Sale may have been due to seeing the purchase as an investment, I do not think this is sufficient to make such a finding, given that the comments are not specific to the sale in question – but rather a general statement that could apply to all or only some of the purchases under discussion. Given how brief the notes are, and that they were not made by Mr B himself, it is possible that they are inaccurate or misleading in this regard – and that is a risk I must be aware of when making my decision.

When making the complaint, the PR provided a statement from Mr and Mrs B (albeit an unsigned and undated one). This is much more detailed than the call note and provides some commentary and recollections about each individual sale. It seems to me that this is likely a more helpful indication of what Mr B remembers of the time of sale. I summarise the reasons given for each purchase below:

- 2012 (Fractional Property Owners Club) – it would enable Mr and Mrs B to holiday in top class resorts whenever they wished but they could always sell it if needed.
- 2014 (Fractional Property Owners Club) – greater flexibility but they could still sell it on without difficulty at any point.
- 2015 (Signature Collection) – this would solve the booking/availability problems they were experiencing, since they would always have their allocated week in a specific suite. They could sell their week without difficulty and make money from it.
- 2016 (Time of Sale) – better suited as they just go on holiday to relax without worrying about the behaviour of other residents.

So, although Mr B has clearly stated that the ability to sell his Fractional Property Owners Club membership in future was part of what drew him to those purchases, he has not specified when writing about those that he hoped or expected to make a profit at the end of their membership term or if selling sooner. It seems to me that Mr B was reassured by the possibility of selling his Fractional Property Owners Club membership at some point before the end of their membership term if he no longer wanted it. I'm also mindful that Fractional Property Owners Club was a different type of timeshare to Signature Collection membership (the latter of which came with the right to stay in the specific suite at the times stated on the contract).

For the 2015 Signature Collection purchase the main reason Mr B purchased was to solve booking and availability issues he was experiencing – since he was guaranteed to be able to stay in the specific suite in specific weeks. A secondary reason for the purchase was the ability to sell that week (“*sell our time in this apartment*”) in years they did not want to use it and possibly make money from doing so – as opposed to the Suite being sold at the end of the membership term and making a profit<sup>2</sup>. So, it is not clear to me that this speaks to the purchase being an investment (as defined above). In any case, this was the previous sale, and the same point has not been made about the Time of Sale.

At the Time of Sale, the stated reason for the purchase relates to Mr B being of the view that the Suite was better located to allow him to relax when using it. There is no suggestion of an additional reason relating to making a profit from the purchase. This clearly undermines the PR’s suggestion that this is why he bought it – especially given that what Mr B has said about the 2015 purchase does not make it clear that he bought it hoping to make a profit.

The statement goes on to discuss later purchases (one of which the Lender says was cancelled within the cooling off period, a fact Mr B does not mention in his statement), before providing the following summary:

*“To sum up we were sold a promise of high quality accommodation in safe and secure resorts which when the contract ended we would be able to sell and were assured that there would be a good profit which was the icing on the cake.”*

Clearly this is a general statement, summing up Mr B’s experience with the Supplier. It could be taken from this that Mr B is saying that he was motivated to enter every purchase by the hope or expectation of a profit. But given the lack of corresponding detail specific to the Time of Sale, I do not think I can fairly and reasonably conclude that is what Mr B meant. If that was what he meant, bearing in mind he had the help of the PR at the time the statement was written, I would have expected Mr B to make this clear in his statement – rather than missing out such a crucial detail when discussing what happened at the Time of Sale and why he entered the Purchase Agreements.

That doesn’t mean Mr B wasn’t interested in a share in the Suite. After all, that wouldn’t be surprising given the nature of the product at the centre of this complaint. But as Mr B himself does not persuade me that his purchase was motivated by his share in the 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 had marketed or sold the Signature Collection membership as an investment in breach of Regulation 14(3) of the Timeshare Regulations, I am not persuaded that Mr B’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 the evidence suggests Mr B would have pressed ahead with the 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 B and the Lender was unfair to him even if the Supplier had breached Regulation 14(3).

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

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<sup>2</sup> The PR misquotes Mr B’s statement in its letter dated 16 September 2025, responding to our Investigator’s assessment, in a way that suggests Mr B was referring to selling the apartment for a profit, which is not what the statement says.

The PR says that Mr B was not given sufficient information at the Time of Sale by the Supplier about membership, including about the ongoing costs of Signature Collection membership and the fact that Mr B'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 B sufficient information, in good time, on the various charges they 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 B nor the PR have persuaded me that he would not have pressed ahead with the 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 B'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.

I've thought about whether 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 B 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.

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 B but as the supplier of contractual rights 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.

I recognise that the Lender was and is part of the same group of companies as the Supplier. And I acknowledge that tie may not have been adequately disclosed at the Time of Sale. But I can't currently see why that renders the credit relationship between Mr B and the Lender unfair to him – such that I should uphold the complaint. I say that because the Lender has explained that the Supplier would share finance proposals among its approved external finance partners; the Supplier couldn't write all its finance business "in-house" [through the Lender]; and the Lender largely provided loans to customers whose circumstances fell outside of its external finance partners' lending terms. So, I'm not persuaded that Mr B was led into a credit agreement with the Lender because it was tied in some way to the Supplier.

What's more, in stark contrast to the facts of Mr Johnson's case, as I understand it, the Lender didn't pay the Supplier any commission at the Time of Sale. And with that being the case, even if there were information failings at that time and regulatory failings as a result (which I make no formal finding on), 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 Mr B.

## Overall Conclusion

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In conclusion, given the facts and circumstances of this complaint, I am not persuaded that the Lender was party to a credit relationship with Mr B under the Credit Agreement and related Purchase Agreement that was unfair to him for the purposes of Section 140A of the CCA.

I do not think that the Lender acted unfairly or unreasonably when it dealt with Mr B's Section 75 claims. And having taken everything into account, I see no other reason why it would be fair or reasonable to direct the Lender to compensate him.

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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 B and the Lender was unfair. In particular, the PR has provided further comments in relation to whether the membership was sold to Mr B 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 at that time. But they didn't make any further comments in relation to those in their response to my provisional decision (other than to say it accepted my findings on commission). 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 in my provisional findings above. So, I'll focus here on the PR's points about whether the membership was sold to Mr B as an investment at the Time of Sale.

The PR has provided further comments and evidence which in my view relates 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 B's complaint, because they do not make me think it's any more likely that any breach of Regulation 14(3) by the Supplier led Mr B to enter into the Purchase Agreement and the Credit Agreement.

The PR has provided its further thoughts as to Mr B's likely motivations for purchasing Signature Collection membership. I recognise it has interpreted Mr B's testimony 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 B'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 paragraph 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 B's purchasing decision. And for that reason, I do not think the credit relationship between Mr B and the Lender was unfair to him even if the Supplier had breached Regulation 14(3).

## **Conclusion**

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In conclusion, I do not think that the Lender acted unfairly or unreasonably when it dealt with the relevant Section 75 claims, and I am not persuaded that the Lender was party to a credit relationship with Mr B under the Credit Agreement that was unfair to him 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 Mr B.

## **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 B to accept or reject my decision before 31 December 2025.

Phillip Lai-Fang  
**Ombudsman**