

## The complaint

Miss C's complaint is, in essence, that Mitsubishi HC Capital UK Plc trading as Novuna Personal Finance (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 C was the member of a timeshare provider (the 'Supplier') – having purchased a product from it previously. But the product at the centre of this complaint was the membership of a timeshare (the 'Signature Collection') from a timeshare provider (the 'Supplier') – which she bought on 9 April 2018 (the 'Time of Sale'). She entered into an agreement with the Supplier to buy 1440 fractional points at a cost of £11,747 (the 'Purchase Agreement').

Signature Collection membership was asset backed – which meant it gave Miss C 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 her membership term. However, the Signature Collection differed from other timeshares offered by the Supplier, in that members had preferential rights to stay in their allocated property, and the properties were said to be more luxurious.

Miss C paid for her Signature Collection membership by taking finance of £11,747 from the Lender (the 'Credit Agreement'). Miss C purchased the membership with three other people. But as the finance used for the purchase at the Time of Sale was in Miss C's sole name, only she is eligible to bring this complaint.

Miss C – using a professional representative (the 'PR') – wrote to the Lender on 20 July 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 C's concerns as a complaint and issued its final response letter on 25 November 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 C 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 17 November 2025. In that decision, I said:

*'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 Signature C membership had been misrepresented by the Supplier at the Time of Sale because Miss C 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 the Signature Collection 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 a 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 Signature Collection membership was misrepresented at the Time of Sale for one or both of those reasons, I don’t think it’s probable. Miss C has given little to none of the colour or context necessary to demonstrating 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 Signature Collection membership was misrepresented for these reasons, I don’t think it was.*

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

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

*Miss C'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 C. 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 C 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 Miss C.*

*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 C 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 Signature Collection 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 C suffering 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 them, even if the loan wasn't arranged properly.*

*The PR also says that there was 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 C 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 Signature Collection membership are likely to have led to an unfairness that warrants a remedy.*

*Overall, therefore, I don't think that Miss C'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 Miss C. And that's the suggestion that Signature Collection membership was marketed*

and sold to her 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 Miss C'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 says that the Supplier did exactly that at the Time of Sale – saying, in summary, that Miss C was told by the Supplier that Signature Collection 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 C the prospect of a financial return – whether or not, like all investments, that was more than what she 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 Miss C 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 Signature Collection 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 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 Miss C 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 Signature Collection membership as an investment. So, I accept that it's equally possible that Signature Collection membership was*

marketed and sold to Miss C 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 Miss C have been rendered unfair to her 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 Miss C 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 C 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.

But on my reading of the evidence before me, the prospect of a financial gain from Signature Collection membership was not an important and motivating factor when Miss C decided to go ahead with the purchase. That doesn't mean she wasn'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 Miss C doesn't persuade me that her purchase was motivated by her 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 Miss C ultimately made.

I say that taking into account the witness statement the PR sent us after the investigator had issued her assessment. The witness statement doesn't appear to have been written by Miss C – it appears to have been written by one of the other people named on the Purchase Agreement. However, Miss C's name is listed at the end of the document.

The witness statement refers to a number of sales, which corroborates what the Supplier has said about the members' previous relationship with it and the products that had previously been purchased. It isn't clear the statement refers specifically to this sale, so it's difficult for me to place a great deal of weight on it.

I note the statement says:

'What they can offer is a money generating apartment because they can see that you are not generating any income from your other apartments.' The statement also refers to the writer being told that 'the grandchildren would benefit.' although there's little detail as to what the Supplier said to make Miss C and the other parties to the Purchase Agreement believe this would be the case. I've considered the available testimony carefully, and, as I've acknowledged, it's possible that the Lender breached Regulation 14(3) of the Timeshare Regulations at the Time of Sale.

On the other hand, the statement refers in some depth about the marketing of resorts and that they 'got swept in all the polish and beautiful looking pictures.' The statement also

mentions that the complex and surrounding areas were lovely and that 'you are happy that you got a deal for a week in a luxury apartment'.

The Supplier provided evidence that during the period between Miss C purchasing the membership and making a complaint, 13 holidays were booked, although only one of those was taken.

I explained earlier in this provisional decision that Signature Collection membership differed from the other types of timeshares offered by the Supplier. There were more luxurious holidays on offer, as well as the ability to stay in the Allocated Property one week a year.

Based on what I've seen, it seems to me that the ability to take holidays was of real importance to Miss C when she decided to purchase Signature Collection membership – especially taking into account what's been said about the standard of the holiday accommodation and the number of trips which were booked using the membership.

I've carefully considered all of the evidence. As I've said, I accept the possibility that Miss C was sold membership as an investment and that this may have been a real consideration for her. But I think it's more likely than not that the main factor behind Miss C's decision to purchase Signature Collection membership was the ability to make use of it to take holidays.

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 Miss C'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 she 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 Miss C and the Lender was unfair to her even if the Supplier had breached Regulation 14(3).

### **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'm not persuaded that the credit relationship between Miss C 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.

### **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 C's Section 75 claim. I am not persuaded that the Lender was party to a credit relationship with her under the Credit Agreement and related Purchase 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 Miss C.'*

The Lender did not respond to the PD.

The PR responded – they did not accept the PD and provided some further comments and evidence they wish to be considered.

Therefore, I'm now finalising 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 3.6.4R 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, 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 is not necessary to set out that context in detail here. But 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

**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 PR's response, 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, for broadly the same reasons.

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 in the main relate to the issue of whether the credit relationship between Miss C and the Lender was unfair. In particular, the PR has provided further comments in relation to whether the membership was sold to Miss C as an investment at the Time of Sale.

As outlined in my PD, the PR originally raised various other points of complaint, all of which I addressed at that time, such as the status of the Supplier and the affordability of the loan. But they didn't provide me any substantive comments or provide any new evidence in support of those points in response to my PD. And with that being the case, I see no reason to change my conclusions in relation to them as set out in my PD. So, I'll focus here on the main points the PR raised in response.

### **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**

As I explained in my PD, I wasn't persuaded that the evidence suggested that Miss C purchased Fractional Club membership in whole or in part down to any breach of Regulation 14(3). I'd reiterate that Miss C doesn't appear to have written the statement and it isn't clear which sale it refers to. Therefore, it is still difficult for me to place significant weight on it. But as I said in my PD, it seems from the witness statement that one of the key reasons for purchasing the membership was to take advantage of holidays in a luxurious resort for a week. As I've set out above, the witness statement says: *'You are happy that you got a deal for a holiday week in a luxury apartment, everything looks great.'* The statement also added *'My husband and I went for our free week it was lovely and the resort was very nice.'* While the statement suggests that the author of the statement believed the membership would generate an income, I still don't think there's clear evidence which indicates what the Supplier said which made them think this would be the case

The PR's response stated that the investment element did play an important part during the sales process in convincing Miss C to purchase and was a motivating factor in her decision making. They've referred to the sale of the property at the end of the membership generating returns and they've highlighted that the 'unit share' was set out on the pricing summary. But it seems to me that this is likely to simply have been a description of how the product worked in practice with no mention of the level of expected return.

So, based on the available evidence, I still find that Miss C's likely key motivation in taking out the timeshare was to benefit from the holidays it offered in more luxurious apartments. Ultimately then, for the above reasons, along with those I already explained in my PD, I remain unpersuaded that any breach of Regulation 14(3) was material to Miss C's purchasing decision.

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 provisional decision, 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 the light of its specific circumstances.

So, as I said before, 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 C's decision to make the purchase was motivated by the prospect of a financial gain. So, I still don't think the credit relationship between Miss C and the Lender was unfair to her for this reason.

#### **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 Financial Conduct Authority's Dispute Resolution Rules ('DISP').

But I don't think *Hopcraft, Johnson and Wrench* assists Miss C 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 C 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 Miss C into a credit agreement that cost disproportionately more than it otherwise could have.

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

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

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 C entered into wasn't high. At £469.88, it was only 4% of the amount borrowed. 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 persuaded that she either wouldn't have understood that or would have otherwise questioned the size of the payment at that time. After all, it remains the case that Miss C 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 Miss C 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 C, 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 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 C.

### **S140A 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'm not persuaded that the credit relationship between Miss C and the Lender under the Credit Agreement and related Purchase Agreement was unfair to her. So, I don't think it is fair or reasonable that I uphold this complaint on that basis.

### **Commission: The Alternative Grounds of Complaint**

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While I've found that Miss C's credit relationship with the Lender wasn't unfair to her for reasons relating to the commission arrangements between it and the Supplier, as I've set out above, two of the grounds on which I came to that conclusion also constitute separate and freestanding complaints to Miss C's complaint about an unfair credit relationship. So, for completeness, I've reconsidered 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 C (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 C 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 Miss C 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.

## **Conclusion**

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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 C'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**

For the reasons I've given above and in my provisional decision, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss C to accept or reject my decision before 8 January 2026.

Lisa Barham  
**Ombudsman**