DRN-6001254

The complaint

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

The timeshare in question was bought jointly by Mrs J and her now late husband Mr J, and the loan taken out to pay for it was also in their joint names. However, as Mr J has sadly died, Mrs J made the complaint as the person now solely responsible for the loan. I will, however, refer to both Mr and Mrs J where it is appropriate to do so.

What happened

It seems Mr and Mrs J were existing members of a timeshare with a third-party timeshare provider.

Then, Mr and Mrs J purchased a new membership of a timeshare (the 'Fractional Membership') from a different timeshare provider (the 'Supplier') on 3 October 2016 (the 'Time of Sale'). They entered into an agreement with the Supplier to buy the right to occupy a named apartment during a set week each year (apartment 600 in week 42) at a cost of £18,950 (the 'Purchase Agreement')

Mr and Mrs J paid for their Fractional Membership by taking finance of £18,950 from the Lender (the 'Credit Agreement') in their joint names.

Fractional Membership was asset backed – which meant it gave Mr and Mrs F more than just holiday rights. It also included a share in the net sale proceeds of a property named on the Purchase Agreement (the 'Allocated property') after their membership term ends in 2030.

Mrs J – using a professional representative (the 'PR') – wrote to the Lender via email on 27 July 2021 (the 'Letter of Complaint') to make a claim under Section 75 of the CCA for an actionable misrepresentation by the Supplier, and a complaint that the credit relationship between her and the Lender had been rendered unfair, under Section 140A of the CCA. As the details of the complaint are well known to both sides, I see no reason to set them out further than the summary above.

The Lender did not respond to Mrs J's complaint (it later said that it had not received it) within the eight weeks required by the regulator, so the PR referred Mrs J's complaint to the Financial Ombudsman Service.

Upon notification that a complaint had been made to us, the Lender said it would consider it. It then sent its final response to Mrs J's complaint on 26 January 2024, rejecting it on every ground.

Unhappy with this response, Mrs J asked for her complaint to be considered by an Investigator at this Service. And that Investigator, having considered the information on file, rejected the complaint on its merits.

Mrs J disagreed with the Investigator's assessment and asked for an Ombudsman's decision – which is why it was passed to me.

My provisional decision

Having considered everything, I agreed that I didn't think the complaint ought to be upheld, but as I had expanded somewhat on the reasons given by the Investigator, I set out my initial thoughts on the merits of Mrs J's complaint in a provisional decision. In the PD I said:

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

And having done that, I do not currently think this complaint should be upheld.

However, before I explain why, I want to make it clear that my role as an Ombudsman is not to address every single point that has been made to date. Instead, it is to decide what is fair and reasonable in the circumstances of this complaint. So, if I have not commented on, or referred to, something that either party has said, that does not mean I have not considered it.

Section 75 of the CCA

The 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 Membership had been misrepresented by the Supplier at the Time of Sale because Mr and Mrs J were:

- *Told by the Supplier that Fractional Membership was an "investment" when that was not true.*

However, 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. After all, a share in an allocated property was, by its very nature, an investment. And as there's nothing else on file to support the PR's allegation, I'm not persuaded that there was a representation by the Supplier on the issue in question that constituted a false statement of fact.

As part of Mrs J's submissions, she has said that the Supplier said it would terminate her existing timeshare, and recover for her the money she had paid for it. If this was a contractual obligation and this wasn't carried out, then this could be considered to be a breach of contract by the Supplier.

But I have seen nothing to support what Mrs J is saying here. There is nothing in the contractual documentation that has been submitted which says anything about the termination of an existing contract with a different supplier, and there is no evidence which leads me to think that the Supplier told Mrs J that it would, or even could, recover any of the money they paid for their existing timeshare.

So, while I recognise that Mrs J and the PR have concerns about the way in which Fractional 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, or that there was a contractual breach in Mr and Mrs J's contract with 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 did not accept 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 Membership was actionably misrepresented by the Supplier at the Time of Sale, or that the contract was breached. 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 Mrs J 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;*
2. *The provision of information by the Supplier at the Time of Sale, including the contractual documentation and disclaimers made by the Supplier;*
3. *Evidence provided by both parties on what was likely to have been said and/or done at the Time of Sale; and*
4. *The inherent probabilities of the sale given its circumstances.*

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

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

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

The PR says, for instance that:

- *The right checks weren't carried out before the Lender lent to Mr and Mrs J; and*
- *Mr and Mrs J were pressured by the Supplier into purchasing Fractional Membership at the Time of Sale.*

However, as things currently stand, neither of these strike me as a reason why this complaint should succeed.

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

And as regards the PR's allegation that Mr and Mrs J were put under undue pressure to make the purchase, I acknowledge that they may have felt weary after a sales process that went on for a long time. But Mrs J says little about what was said and/or done by the Supplier during their sales presentation that made them feel as if they had no choice but to purchase Fractional Membership when they simply did not want to. They were also given a 14-day cooling off period and they have not provided a credible explanation for why they did not cancel their membership during that time. And with all of that being the case, there is insufficient evidence to demonstrate that Mr and Mrs J made the decision to purchase Fractional Membership because their ability to exercise that choice was significantly impaired by pressure from the Supplier.

Overall, therefore, I don't think that Mrs J'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 now says the credit relationship with the Lender was unfair to Mrs J. And that's the suggestion that Fractional Membership was marketed and sold to her and Mr J 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

A share in the Allocated Property clearly constituted an investment as it offered Mr and Mrs J the prospect of a financial return – whether or not, like all investments, that was more than what they first put into it. But it is important to note at this stage that the fact that Fractional 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 Membership. They just regulated how such products were marketed and sold.

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

And there is competing evidence in this complaint as to whether Fractional 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 the Fractional Membership as an 'investment'. There were disclaimers in the sales documents that went some way to saying that the Fractional Membership wasn't to be seen by Mr and Mrs J as an investment. So, it's possible that the Membership wasn't marketed or sold to them as an investment in breach of Regulation 14(3).

But on the other hand, I acknowledge that Mrs J says the Supplier positioned Fractional Membership to her and Mr J as an investment. So, I accept that it's equally possible that Fractional Membership was marketed and sold to Mr and Mrs J 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 the Consumer rendered unfair?

Having found that it was possible that the Supplier breached Regulation 14(3) of the Timeshare Regulations at the Time of Sale, I now need to consider what impact that breach (if there was one) had on the fairness of the credit relationship between Mrs J 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 Mrs J 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 and Mr J 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 Fractional Membership was not an important and motivating factor when Mr and Mrs J decided to go ahead with their purchase. I'm simply not persuaded that was the case. I'll explain.

As part of its submissions to this Service, the PR sent in a statement from Mrs J setting out her recollections of the Time of Sale, why they were on holiday at that time, and why they ended up buying the Fractional Membership. She also set out some of the reasons why she was unhappy with the way the membership was working. She said:

> *"We were on holiday in the [Supplier] resorts (my husband died 2 months after this visit). We wanted to come out of [the previous supplier's membership] and the reps advised that they could get us out of [the previous membership] if we took a holidays [sic] for a week and discussed our options.*
>
> *We took the weeks holiday and the representatives advised that if we purchase a week with [the Supplier] they will terminated [sic] the [previous membership]. The reps advised that they would not pay the first 5 months of the membership and by then they will have sorted the [previous membership] and we would have all our money back to pay the balance on [the Fractional Membership]. Additionally, we would not be able to use the resort for a year as this was under refurbishment and that we would not have to use all the stairs (of which there are many) as there would be a new lift installed to the apartments. This is not the case. My husband died a matter of months after we purchased this product and the first time, I used this was in 2018. The rooms had been refurbished but I had to carry my case up a flight of 40 stairs as there was no lift and no one to help me.*
>
> *We were advised that we were purchasing an investment in bricks and mortar and that when the loan was finished when I was 83 they would buy back the property from me. The representatives advise that we would be able to sell our unit for £25 - £30,000. The representatives showed us testimonials of other members saying how lucrative this investment was.*
>
> *[…]*
>
> *Therefore, on the advice of the representatives and believing we would have all our money back from [the previous supplier] to pay the balance on the purchase with [the Supplier] we purchased unit 600 week 42 on the 3 October 2016 for the cost of £18500."*

On my reading of this, Mr and Mrs J were unhappy with their existing timeshare, and wanted to terminate that membership. And they engaged the Supplier at the Time of Sale with the

intention of terminating their contract and replacing their previous membership with the Fractional Membership. So, I can see that was the reason they made the purchase. I am not persuaded that they bought it because a potential profit could be made when the property was sold in 2030.

That doesn't mean they weren't interested in a share in the Allocated Property. Mrs J makes it clear that that was a consideration, and that is unsurprising given the nature of the product at the centre of this complaint. But as Mrs J herself doesn't persuade me that their purchase was motivated by their share in the Allocated Property and the possibility of a profit, I don't think a breach of Regulation 14(3) by the Supplier was likely to have been material to the decision they ultimately made. I think they would have made the purchase anyway, as a way to terminate their existing timeshare contract.

On balance, therefore, even if the Supplier had marketed or sold the Fractional Membership as an investment in breach of Regulation 14(3) of the Timeshare Regulations, I am not persuaded that Mr and Mrs J's decision to purchase Fractional Membership at the Time of Sale was motivated by the prospect of a financial gain (i.e., a profit). On the contrary, I think the evidence suggests they would have pressed ahead with their purchase whether or not there had been a breach of Regulation 14(3). And for that reason, I do not think the credit relationship between Mrs J and the Lender was unfair to her even if the Supplier had breached Regulation 14(3).

Mrs J's Commission Complaint

I note that one of Mrs J'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 the implications of that judgment become clear, I will finalise my findings on this complaint.

Conclusion

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

But, as I've already said, once the implications of Johnson, Wrench and Hopcraft become clear, I will finalise my findings on this complaint."

Neither side had anything further to add following my PD.

My thoughts on the commission complaint

Then, I wrote to both sides with my initial thoughts on the complaint that an undisclosed payment of commission had been made by the Lender to the Supplier. I said:

"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 Mrs [J] 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.

Based on what I've seen, 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 Mrs [J] 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.

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 Mrs [J], 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 Mrs [J] into a credit agreement that cost disproportionately more than it otherwise could have.

What's more, in stark contrast to the facts of Mr Johnson's case, as I understand it, no payment between the Lender and the Supplier, such as a commission, was payable when the Credit Agreement was arranged 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 commercial 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 Mrs [J].

My provisional decision - commission

In conclusion, given the facts and circumstances of this complaint, 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 her."

Neither the PR (on Mrs J's behalf) nor the Lender had anything to add following this. As both sides have now responded, the complaint has come back to me for a 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. 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.

As neither side has submitted any new evidence or arguments, and having reconsidered everything afresh, I can see no reason to depart from my initial thoughts as set out in the PD, and those on commission that I set out separately.

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 Mrs J under the Credit Agreement that was unfair to her 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 Mrs J.

My final decision

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs J to accept or reject my decision before 2 January 2026.

Chris Riggs
Ombudsman