

The Complaint

Ms M'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 unfair credit relationships with her 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.

Background to the Complaint

Ms M, and another party, were members of a timeshare provider (the 'Supplier') – having purchased a trial membership from it on 27 September 2017. But the products at the centre of this complaint is her memberships of a timeshare that I will call the 'Fractional Club' – points in which Ms M, and another party purchased on the dates below:

- 1,200 fractional points on 5 December 2017 for £19,514 ('Purchase Agreement 1'). After trading in their trial membership, the cost of this agreement was £15,618.
- 1,590 fractional points on 24 April 2018 for £6,965 – having traded in the first lot of 1,200 fractional points. ('Purchase Agreement 2')

(which, when appropriate, I will simply refer to as the "Purchase Agreements")

As this complaint is concerned with the purchases on 5 December 2017 and 24 April 2018, those are the 'Times of Sale' for the purposes of my decision.

Ms M paid for their fractional points by taking the following amounts of finance from the Lender, in her sole name:

- £20,232 on 5 December 2017 ('Credit Agreement 1') – this included an amount to pay off some outstanding finance in relation to their trial membership
- £27,407 on 24 April 2018 ('Credit Agreement 2') – this included an amount to pay off some outstanding finance in relation to their previous Fractional Club membership

(which, when appropriate, I will simply refer to as the "Credit Agreements")

Whilst the Purchase Agreements were in joint names, Ms M is the only eligible claimant (and complainant) under the Credit Agreements. For that reason, I shall refer to Ms M only throughout this decision.

Fractional Club membership was asset backed – which meant it gave Ms M more than just holiday rights. It also included a share in the net sale proceeds of a property named on the relevant purchase agreement (which I will refer to as the 'Allocated Property 1 and 2, when appropriate, the 'Allocated Properties') after her membership term ends.

Ms M – using a professional representative (the 'PR') – wrote to the Lender on 29 January 2024 (the 'Letter of Complaint') to raise a number of different concerns. As those concerns have not changed since they were first raised, and as both sides are familiar with them, it is not necessary to repeat them in detail here beyond the summary above.

The Lender dealt with Ms M's concerns as a complaint and issued its final response letter on

3 June 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.

Ms M 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 ('PD') dated 5 December 2025, concluding the complaint should not be upheld. The findings from my PD are set out below.

"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 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 here.

What I have provisionally decided – and why

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. And having done that, I do not 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.

In addition to this, the Lender offered Ms M £50 compensation for the delay in issuing its final response letter to her. If Ms M wants to accept this, if she has not done so already, she is free to contact the Lender about this directly.

Section 140A of the CCA: did the Lender participate in one or more unfair credit relationships?

Having considered the entirety of the credit relationships between Ms M and the Lender along with all of the circumstances of the complaint, I do not think the credit relationships between them were likely to have been rendered unfair for the purposes of Section 140A. When coming to that conclusion, and in carrying out my analysis, I have looked at:

- 1. The standard of the Supplier's commercial conduct – which includes its sales and marketing practices at the Times of Sale along with any relevant training material;*
- 2. The provision of information by the Supplier at the Times 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 Times of Sale;*
- 4. The inherent probabilities of the sale given its circumstances; and, when relevant*

5. Any existing unfairness from a related credit agreement.

I have then considered the impact of these on the fairness of the credit relationships between Ms M and the Lender.

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

Ms M's complaint about the Lender being party to one or more unfair credit relationships was made for several reasons.

However, I've firstly considered whether the misrepresentations she alleges were made by the Supplier in the context of her Section 75 claims could have caused any unfairness for the purposes of Section 140A.

It was said in the Letter of Complaints that Fractional Club memberships had been misrepresented by the Supplier at the Times of Sale because Ms M was:

- 1. Told that she had purchased investments that would "considerably appreciate in value" when that was not true.*
- 2. Told that she would own a share in a properties that would increase in value during the membership terms when that was not true.*
- 3. Made to believe that she would have access to "the holiday apartments" at any time all year round when that was not true.*

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 is not enough 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 point 3, while it is possible that Fractional Club memberships were misrepresented at the Times of Sale for that reason, I do not think it is probable. She has given little to none of the colour or context necessary to demonstrate that the Supplier made false statements of existing fact and/or opinion. And as there is not any other evidence on file to support the suggestion that Fractional Club memberships were misrepresented for this reason, I do not think they were.

So, while I recognise that Ms M and the PR have concerns about the way in which Fractional Club memberships were sold by the Supplier, I do not think this caused any unfairness in Ms M's credit relationships with the Lender such that it warrants a remedy.

Turning to the points specifically raised in relation to the potential unfairness of the relationship between Ms M and the Lender, the PR says, for instance, that the right checks were not carried out before the Lender lent to Ms M. I have not 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 Ms M was actually unaffordable before also concluding that she lost out as a result and then consider whether the credit relationships with the Lender were unfair to her for this reason. But from the information provided, I am not satisfied that the lending was unaffordable for Ms M.

Connected to this is the suggestion by the PR that the Credit Agreements were arranged by an unauthorised credit broker, the upshot of which is to suggest that the Lender was not permitted to enforce the Credit Agreements. However, it looks to me like Ms M knew, amongst other things, how much she was borrowing and repaying each month, who she was borrowing from and that she was borrowing money to pay for Fractional Club membership. And as the lending does not look like it was unaffordable for her, even if the Credit Agreements were arranged by a broker that did not have the necessary permission to do so (which I make no formal finding on), I cannot see why that led to a financial loss for Ms M— such that I can say that the credit relationships in question were unfair on her as a result. And with that being the case, I am not persuaded that it would be fair or reasonable to tell the Lender to compensate her, even if the loans were not arranged properly.

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

Overall, therefore, I do not think that Ms M's credit relationships 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 relationships with the Lender was unfair to her. And that is the suggestion that Fractional Club memberships were marketed and sold to her as an investment in breach of prohibition against selling timeshares in that way.

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

The Lender does not dispute, and I am satisfied, that Ms M's Fractional Club memberships met the definition of a "timeshare contract" and was a "regulated contract" for the purposes of the Timeshare Regulations.

Regulation 14(3) of the Timeshare Regulations prohibited the Supplier from marketing or selling Fractional Club membership as an investment. This is what the provision said at the Times 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 Times of Sale – saying, in summary, that Ms M was told by the Supplier that Fractional Club membership was the type of investment that would only increase in value.

The term "investment" is not defined in the Timeshare Regulations. But for the purposes of this provisional decision, and by reference to the decided authorities, an investment is a transaction in which money or other property is laid out in the expectation or hope of financial gain or profit.

Shares in the Allocated Properties clearly constituted investments as they offered Ms M

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 Fractional Club membership included an investment element did not, itself, transgress the prohibition in Regulation 14(3). That provision prohibits the marketing and selling of a timeshare contract as an investment. It does not prohibit the mere existence of an investment element in a timeshare contract or prohibit the marketing and selling of such a timeshare contract per se.

In other words, the Timeshare Regulations did not ban products such as the Fractional Club. They just regulated how such products were marketed and sold.

To conclude, therefore, that Fractional Club memberships were marketed or sold to Ms M 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 memberships to her as an investment, i.e. told her or led her to believe that Fractional Club memberships offered her the prospect of a financial gain (i.e., a profit) given the facts and circumstances of this complaint.

There is competing evidence in this complaint as to whether Fractional Club membership was marketed and/or sold by the Supplier at the Times of Sale as an investment in breach of Regulation 14(3) of the Timeshare Regulations.

On the one hand, it is clear that the Supplier made efforts to avoid specifically describing membership of the Fractional Club as an ‘investment’ or quantifying to prospective purchasers, such as Ms M, the financial value of their share in the net sales proceeds of the Allocated Properties along with the investment considerations, risks and rewards attached to them.

On the other hand, I acknowledge that the Supplier’s sales process left open the possibility that the sales representative may have positioned Fractional Club membership as an investment. So, I accept that it is equally possible that Fractional Club membership was marketed and sold to Ms M 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 is not necessary to make a formal finding on that particular issue for the purposes of this decision.

Were the credit relationships between the Lender and the Ms M rendered unfair?

Having found that it was possible that the Supplier breached Regulation 14(3) of the Timeshare Regulations at the Times of Sale, I now need to consider what impact such breaches had on the fairness of the credit relationships between Ms M and the Lender under the Credit Agreements and related Purchase Agreements 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 credit relationships between Ms M and the Lender that were 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 Agreements and the Credit Agreements is an important consideration. To help me decide this point, I have carefully considered what Ms M has said in the course of her complaint about how the memberships were sold to her and her motivations for taking them out.

As I have stated above, it is said within the Letter of Complaints that Ms M was told that she had purchased investments that would increase in value and was promised considerable returns. There was no further detail underpinning these statements within the Letter of Complaints.

But as I have said, I accept that it is possible that the Supplier positioned Fractional Club memberships as investments but what I need to establish is whether such positionings were material to Ms M's decision to purchase these memberships.

But on my reading of the evidence before me, the prospect of a financial gain from Fractional Club memberships were not an important and motivating factor when Ms M decided to go ahead with her purchases.

The PR provided a statement from Ms M containing her recollections from the Times of Sale. Ms M recalls her first initial interaction with the Supplier on 27 September 2017 which resulted in her purchasing a trial membership. She said "they have explained about money investing in resorts.....", "at that point we thought this would be a nice opportunity to invest into something and maybe also make some money out of it...." and "eventually after 4 hours we gave in and sign [sic] a contract thinking this will be a good investment". As I mentioned earlier, I am not considering the sale of her trial membership as this has not been complained about. But this is the only reference Ms M makes within her three-page witness statement which alludes to any form of monetary gain.

Ms M goes on to explain her experiences when taking out her Purchase Agreements. In relation to Purchase Agreement 1, insofar as is relevant to the matter I am considering here, Ms M says:

"we ended up again upgrading the contract with them in exchange of more points and to get bigger apartment in a nicer area of the resort.

....

...like so many people we were thinking that maybe we are doing something good and we could come with our family and friends more often for holidays".

In relation to Purchase Agreement 2, Ms M says:

"We were truly intrigued and amazed by the good area of apartments they showed us this time, and they sounded everything to be so easy and good...

.....

So the contract was for 19 years and what we were thinking this time was that they told us at the end of the 19 years of contract the property would be ours..."

Ms M goes on to explain:

"We ended believing that we were saving money on holidays and investing in a property for our future, as they convinced us we could go everywhere we wanted, whenever we want, for bigger apartments to share with friends, again thinking we would save money, and been pressured by them into signing...."

From what Ms M has said in relation to Purchase 1, I think Ms M was interested in the holiday options the Supplier offered her and chose to purchase on this basis. Nothing in what she said about this Time of Sale suggests to me that Ms M was told or led to believe that this membership offered her the prospect of a financial gain (i.e., a profit).

In relation to Purchase Agreement 2, Ms M describes, in my opinion, how the prospect of

holidays appealed to her. In addition to this, she also described how the contract was for 19 years, although mistakenly quoting that the property was hers at the end of the membership term. She goes on to explain how she could pass this to her son at the end of the membership term – but even if I was to accept Ms M was interested in the investment element of the membership – her previous membership (Purchase Agreement 1) was similar in what it had offered and she has not explained why she felt the need to upgrade as in April 2018, Ms M already owned a Fractional Club membership. Ms M did increase the share she held in the net sale proceeds of the Allocated Property – therefore increasing the level of potential return she could expect. Ms M does not refer to this increase as a factor in her decision making – something I would have expected her to have done when reflecting on why she upgraded from one type of Fractional Ownership timeshare to another. Instead, the focus throughout her statement, in my opinion, is much more about the holiday rights given to her following this purchase. The sales note from the time says Ms M “Bought bigger fraction for more points and extra benefits” so this would suggest she was interested in the holiday related features which motivated her purchase. Ms M did obtain more holiday points increasing from 1 fraction to 2 fractions which provided additional benefits like free upgrades and 2 for 1 deals.

Taking everything into account, I am reasonably satisfied on balance of the evidence available to me that Ms M was not primarily motivated by the prospect of financial gain when she made her decisions to purchase her memberships. That does not mean she was not interested in a share in the Allocated Properties. After all, that would not be surprising given the nature of the products at the centre of this complaint. But as Ms M herself does not persuade me that her purchases were motivated by her shares in the Allocated Properties and the possibility of a profit, I do not think breaches of Regulation 14(3) by the Supplier were likely to have been material to the decisions Ms M ultimately made.

On balance, therefore, even if the Supplier had marketed or sold the Fractional Club membership as an investment in breach of Regulation 14(3) of the Timeshare Regulations, I am not persuaded that Ms M’s decisions to purchase Fractional Club membership at the Times of Sale were 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 her purchases whether or not there had been a breach of Regulation 14(3). And for that reason, I do not think the credit relationships between Ms M and the Lender were unfair to her even if the Supplier had breached Regulation 14(3).

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

The PR says that Ms M was not given sufficient information at the Times of Sale by the Supplier about the ongoing costs of Fractional Club membership. The PR also says that the contractual terms governing the ongoing costs of membership and the consequences of not meeting those costs were unfair contract terms.

As I have 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 Ms M sufficient information, in good time, on the various charges she could have been subject to as Fractional Club members in order to satisfy the requirements of Regulation 12 of the 2010 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 Ms M nor the PR have persuaded me that she

would not have pressed ahead with her purchases had the finer details of the Fractional Club's ongoing costs been disclosed by the Supplier in compliance with Regulation 12, I cannot see why any failings in that regard are likely to be material to the outcome of this complaint given its fact and circumstances.

As for the PR's argument that there were one or more unfair contract terms in the Purchase Agreements, I cannot see that any such terms were operated unfairly against Ms M in practice, nor that any such terms led her to behave in a certain way to her detriment. And with that being the case, I am not persuaded that any of the terms governing Fractional Club membership are likely to have led to an unfairness that warrants a remedy.

Insolvency of the Supplier and its implications on the Credit Agreements

The PR argues that, because the Supplier's Spanish based sales companies have closed, Ms M will not recover any amounts that are expected to be awarded by the Spanish court. But this is of no impact on the complaint because (1) I cannot see that the Supplier (i.e., company that entered into the Purchase Agreements) is itself the subject of a court judgment in Ms M's favour nor can I see that the Lender has been party to any court proceedings and (2) even if he had a claim for something, there is no explanation as to why the Lender would be responsible to answer it.

Overall, given the facts and circumstances of this complaint, I am not persuaded that it would be fair or reasonable to uphold it for this reason.

Section 75 of the CCA: the Supplier's misrepresentations at the Times 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. But for the reasons below, it is not necessary to make any formal findings on them here.

This is because when I considered whether the credit relationships between the Lender and Ms M were unfair, I considered all the allegations of misrepresentation that Ms M raised as part of her Section 75 claim. As mentioned above, I do not think the Supplier misrepresented the Purchase Agreements to Ms M, so I do not think it is necessary to consider either of Ms M's Section 75 claims.

Ms M's Commission Complaint

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

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 claims, 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 credit relationships with Ms M under the Credit Agreements that were 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 her.”

I gave both parties the opportunity of responding and providing any further information or argument before I made my final decision. The Lender did not respond to my PD.

The PR responded on behalf of Ms M and did not accept the PD and provided some further comments it wanted to be taken into account. It also raised, for the first time, an allegation that the payment of a commission by the Lender to the Supplier caused an unfair credit relationship.

Having read everything, I sent the following email to both parties:

“In my provisional decision, I noted that one of Ms M’s other concerns related to the alleged payment of commission by the Lender to the Supplier for acting as a credit broker and arranging the Credit Agreements. But, I said that the Supreme Court’s pending (at that time) judgment on this issue may prove important to this complaint. So, I explained that I would not finalise my thoughts on this complaint until it had been handed down and I had considered its implications on this complaint, if there are any.

As that has now happened and I have considered it, I am outlining my thoughts on this issue in this letter so that both parties have the opportunity to respond before I finalise my decision.

The legal and regulatory context

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

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

The Consumer Credit Sourcebook (‘CONC’) – Found in the Financial Conduct Authority’s (the ‘FCA’) Handbook of Rules and Guidance

Below are the most relevant provisions and/or guidance as they were at the relevant time:

- CONC 3.7.3 [R]
- CONC 4.5.3 [R]
- CONC 4.5.2 [G]

The FCA's Principles

The rules on consumer credit sit alongside the wider obligations of firms, such as the Principles for Businesses ('PRIN'). Set out below are those that are most relevant to this complaint:

- Principle 6
- Principle 7
- Principle 8

The Provision of Information by the Supplier at the Times of Sale

The PR says that a payment of commission from the Lender to the Supplier at the Times of Sale should lead me to uphold this complaint because, simply put, information in relation to that payment went undisclosed at the Times 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 am required to consider under Rule 3.6.4 of the Financial Conduct Authority's Dispute Resolution Rules ('DISP').

But I do not think Hopcraft, Johnson and Wrench assists Ms M in arguing that their credit relationships with the Lender were unfair to her for reasons relating to commission given the facts and circumstances of this complaint.

I have not seen anything to suggest that the Lender and Supplier were tied to one another contractually or commercially in a way that was not properly disclosed to Ms M, nor have I seen anything that persuades me that the commission arrangements between them gave the Supplier a choice over the interest rates that led Ms M into the Credit Agreements that cost disproportionately more than it otherwise could have.

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

But as I have 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 is not 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 Times of Sale, it is for the reasons set out below that I do not currently think any such failure is itself a reason to find the credit relationships in question unfair to Ms M.

In stark contrast to the facts of Mr Johnson's case, from what I know about how the Supplier operated at the Times of Sale, the amount of commission paid by the Lender to the Supplier for arranging the Credit Agreements that Ms M entered into were not high. As I understand, the commission rate at the Times of Sale would not have been more than 0.91% of the amounts borrowed and even less than that as a proportion of the charge for credit on both agreements. So, had she known at the Times of Sale that the Supplier was going to be paid a flat rate of commission at that level, I am not currently persuaded she either would not have understood that or would have otherwise questioned the size of the payment at that time. After all, Ms M wanted Fractional Club memberships and had no obvious means of her own to pay for it. And at such a low level, the impact of commission on the cost of the credit she needed for a timeshare she wanted does not strike me as disproportionate. So, I think she would still have taken out the loans to fund her purchases at the Times of Sale had the amount of commission been disclosed.

What is more, based on what I have seen so far, the Supplier's role as a credit broker was not 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 cannot 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 Agreements. And as it was not acting as an agent of Ms M but as the supplier of contractual rights they obtained under the Purchase Agreements, the transactions do not strike me as one with features that suggest the Supplier had an obligation of 'loyalty' to her when arranging the Credit Agreements and thus a fiduciary duty.

Overall, therefore, I am 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 relationships unfair to Ms M.

So, given all of the factors I have looked at both here and in my provisional decision, and having taken all of them into account, I am still not persuaded that the credit relationships between Ms M and the Lender under the Credit Agreements and related Purchase Agreements were unfair to her. And as things currently stand, I do not think it would be fair or reasonable that I uphold this complaint on that basis.

Commission: The Alternative Grounds of Complaint

While I have provisionally found that Ms M's credit relationships with the Lender were not unfair to her for reasons relating to the commission arrangements between it and the Supplier, two of the grounds on which I came to that conclusion also constitute separate and freestanding complaints to Ms M's complaint about an unfair credit relationships. So, for completeness, I have considered those grounds on that basis here.

The first ground relates to whether the Lender is liable for the dishonest assistance of a breach of fiduciary duty by the Supplier because it took a payment of commission from the Lender without telling Ms M (i.e., secretly). And the second relates to the Lender's compliance with the regulatory guidance in place at the Times of Sale insofar as it was relevant to disclosing the commission arrangements between them.

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

Overall Conclusion

So again, in conclusion, given the facts and circumstances of this complaint, I still do not think that the Lender acted unfairly or unreasonably when it dealt with Ms M's Section 75 claims. I am also not persuaded that the Lender was party to a credit relationship with her under the Credit Agreements and related Purchase Agreements that were 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 party responded so I am now finalising my decision.

What I've decided – and why

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

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, for broadly the same reasons.

Again, my role as an Ombudsman isn't to address every single point which has been made to date, but to decide what is fair and reasonable in the circumstances of this complaint. If I

haven't commented on, or referred to, something that either party has said, this doesn't mean I haven't considered it.

Rather, I've focused here on addressing what I consider to be the key issues in deciding this complaint and explaining the reasons for reaching my final decision.

The PR's further comments in response to the PD in the main relate to the issue of whether the credit relationships between Ms M and the Lender were unfair. In particular, the PR has provided further comments in relation to whether the memberships were sold to Ms M as an investment at the Times of Sale.

As outlined in my PD, the PR originally raised various other points of complaint, all of which I addressed at that time. But it didn't make any further comments in relation to those in their response to my PD. Indeed, it hasn't said it disagrees 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 PD. So, I'll focus here on the PR's points raised in response.

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

The PR has highlighted under Section 140B (9) of the CCA, the burden of proof falls on the Lender to disprove the allegation that its relationships with Ms M were unfair. I agree that this is correct, placing a burden on lenders during the process of litigation. That does not mean, though, that the Lender – or I – should take claims at face value. There remains an onus on Ms M to provide some evidence for the claims she is making, despite the overall burden of proof resting with the Lender, as was set out in the judgment in *Smith and another v Royal Bank of Scotland plc* [2023] UKSC 34 at paragraph 40. I also remind both parties that it is my role to make findings on what I consider to be fair and reasonable in all the circumstances of any given complaint.

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

In its response to my PD, the PR has reasserted its view that the Supplier marketed the Fractional Club memberships to Ms M as an investment and that this was a motivating factor in her decisions to purchase them.

The PR also said that in the judgment handed down in *Shawbrook & BPF v FOS*¹, it was not challenged that the product in question was marketed and sold as an investment. I accepted in my PD that the memberships may well have been marketed as investments to Ms M in breach of the prohibition in Regulation 14(3) of the Timeshare Regulations. I also explained that while the Supplier's sales processes left open the possibility that the sales representatives may have positioned Fractional Club memberships as investments, it wasn't necessary for me 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 response to my PD hasn't changed my view of this, and so whether the Supplier's breach of Regulation 14(3) led Ms M to enter into the Purchase Agreements and the Credit Agreements remains an important consideration.

¹ R (on the application of Shawbrook Bank Ltd) v Financial Ombudsman Service Ltd and R (on the application of Clydesdale Financial Services Ltd (t/a Barclays Partner Finance)) v Financial Ombudsman Service [2023] EWHC 1069 (Admin) ('Shawbrook & BPF v FOS').

In my PD I explained the reasons why I didn't think any breach of Regulation 14(3) had led Ms M to proceed with her purchases. In short, I was not persuaded that her decisions were motivated by the prospect of a financial gain (i.e., a profit). In reaching that view, I took into account the testimony given by Ms M in the course of her complaint. I recognise the PR has interpreted Ms M's testimony differently to how I have, and I have carefully considered its further comments. Ultimately though, they have not led me to a different conclusion.

In their response to my PD, the PR reiterates Ms M is a non-native English speaker. The PR says it is unreasonable to expect her to articulate an investment motivation in technical terms. It would be worthwhile noting that this wasn't and isn't my expectation. However, I see no reason why a professional representative would not ensure a witness statement accurately reflects what a consumer meant, if, someone like Ms M was finding it difficult to articulate herself. I would also add that Ms M did say in her witness statement *'when writing it is easy as I have autocorrection on my laptop and I can rethink what I write'* so I see no reason as to why I can't place weight on her statement when considering her motivations for purchasing. The PR has provided no further clarification or explanation directly from Ms M in relation to her motivations for purchasing on both occasions. So, ultimately, 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 Ms M's purchasing decisions.

The PR states it doesn't matter whether the investment element was Ms M's main or primary reason to purchase. But I didn't make that finding in my PD. I said that, in my view, Ms M was motivated by the holiday options offered by the Supplier on both occasions – which was a factor in my overall conclusion in light of all the available evidence that she would, on balance, have pressed ahead with her purchases of the Fractional Club memberships even if there had been a breach of Regulation 14(3).

So for the reasons given in my PD and above, I still do not think that any breaches of Regulation 14(3), if there were any, were material to Ms M's decisions to purchase the Fractional Club memberships.

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

I will address the PR's point regarding the apparent ambiguity in the proposed sale date of Allocated Property 2. The PR suggests that a delayed sale date could lead to an unfairness to Ms M in the future, as any delay could mean a delay in the realisation of her share in Allocated Property 2.

It does appear that the proposed date for the commencement of the sales process, as set out on the owners' certificate, is 31 December 2032. This same date is set out under point 1 of the Members Declaration, which has been initialled and signed as being read by Ms M. This date indicates that the membership has a term of 15 years. The ambiguity identified by the PR is that in the Information Statement provided as part of the purchase documentation it says the following:

“The Owning Company will retain such Allocated Property until the automatic sale date in **19 years time** or such later date as is specified in the Rules or the Fractional Rights Certificate.” (my emphasis)

It seems clear to me that the contractual commencement date for the start of the sales process is 31 December 2032. This actual date is repeated in the sales documentation as I've set out above. The Information Statement is, in my view, reflective of the fact that most fractional memberships were set up to run for nineteen years. But not all memberships attached to a given Allocated Property were sold at exactly the same time, so often the time left before the sale date was less than nineteen years at the actual time of sale. I accept that

this could be confusing, however I do not think Ms M was misled by this when entering Purchase Agreement 2. So, I can't see that this is a reason to find the credit relationship unfair and uphold this complaint.

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 Ms M's Section 75 claims, and I am not persuaded that the Lender was party to credit relationships with her under the Credit Agreements that were 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 set out above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms M to accept or reject my decision before 25 February 2026.

Sameena Ali
Ombudsman