DRN-6037635

The complaint

Ms G's complaint is, in essence, that Clydesdale Financial Services Limited trading as Barclays Partner Finance ('BPF') 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.

Background to the complaint

Ms G, together with her husband Mr G, was the member of a timeshare provider (the 'Supplier') – having purchased products from it previously. But the product at the centre of this complaint is their membership of a timeshare that I'll call the 'Signature Collection', which they bought on 27 December 2016 (the 'Time of Sale'). They entered into an agreement with the Supplier to buy 2,450 fractional points at a cost of £21,774 (the 'Purchase Agreement').

Signature Collection membership was asset backed – which meant it gave Ms G and Mr G 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.

Ms G and Mr G paid for their Signature Collection membership by trading in their existing membership and taking a loan of £29,966 from BPF in Ms G's sole name (the 'Credit Agreement'). Some of the funds were used to repay an existing loan taken with a different lender to fund the purchase of their previous membership.

As only Ms G was named on the Credit Agreement, only she is able to refer a complaint about it to our Service. For ease I will refer to Ms G only from here on, even where she and Mr G may have been acting jointly or the matter might otherwise apply to Mr G in some way.

Ms G – using a professional representative ('PR1') – wrote to BPF on 8 November 2021 (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.

BPF dealt with Ms G's concerns as a complaint and issued its final response letter on 15 July 2024, rejecting it on every ground.

The complaint was then referred to the Financial Ombudsman Service. By this time, Ms G was assisted by a different professional representative ('PR2'). One of our Investigators reviewed the complaint and after considering all the information on file, did not think it should be upheld.

Ms G disagreed with the Investigator's assessment and asked for an Ombudsman's decision, so it was passed to me.

I considered the matter and issued a provisional decision (the 'PD'). 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. BPF 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 Collection membership had been misrepresented by the Supplier at the Time of Sale because Ms G was:

1. Told that she had purchased an investment that would "considerably appreciate in value" when that was not true.
2. Told that she would own a share in a property that would increase in value during the membership term when that was not true.
3. Told that she could sell the timeshare back to the resort or easily sell it at a profit.
4. Made to believe that she would have access to "the holiday apartment" 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 isn't 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 points 3 and 4, while it's *possible* that Signature Collection membership was misrepresented at the Time of Sale for either or both of these reasons, I don't think it's *probable*. Neither allegation is given the colour or context I consider necessary to demonstrating that the Supplier made a false statement of existing fact and/or opinion. The documentation that Ms G was given (and signed) at the Time of Sale made it clear that the Supplier did not run a "resale" programme. And it explained that Ms G *did* acquire a preferential right to use the Allocated Property through the membership, but that such right existed only for a specific week on a bi-annual basis. I find it unlikely that the Supplier would've made promises of the type suggested in the Letter of Complaint, which would have been so starkly contradictory to the contractual paperwork and demonstrably false.

So, while I recognise that Ms G and her representatives 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 BPF acted unreasonably or unfairly when it dealt with this particular Section 75 claim.

Section 140A of the CCA: did BPF 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 Ms G and BPF along with all of the circumstances of the complaint, I don't think the credit relationship between them was likely to have been rendered unfair for the purposes of Section 140A. When coming to that conclusion, and in carrying out my analysis, I have looked at:

1. The standard of the Supplier's commercial conduct – which includes its sales and marketing practices at the Time of Sale along with any relevant training material;
2. The provision of information by the Supplier at the Time of Sale, including the contractual documentation and disclaimers made by the Supplier;
3. Evidence provided by both parties on what was likely to have been said and/or done at the Time of Sale;
4. The inherent probabilities of the sale given its circumstances; and, when relevant
5. Any existing unfairness from a related credit agreement.

I have then considered the impact of these on the fairness of the credit relationship between Ms G and BPF.

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

Ms G's complaint about BPF being party to an unfair credit relationship was made for several reasons.

PR1 said, for instance, that the right checks weren't carried out before BPF lent to Ms G. 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 BPF 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 G was actually unaffordable before also concluding that she lost out as a result and then consider whether the credit relationship with BPF was unfair to her for this reason. But from the information provided, I am not persuaded that the lending was unaffordable for Ms G.

Connected to this is the suggestion that the Credit Agreement was arranged by an unauthorised credit broker, the upshot of which is to suggest that BPF wasn't permitted to enforce the Credit Agreement. However, it looks to me like Ms G 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 Ms G suffering a financial loss – such that I can say that the credit relationship in question was unfair on her as a result. And with that being the case, I'm not persuaded that it would be fair or reasonable to tell BPF to compensate her, even if the loan wasn't arranged properly.

Overall, therefore, I don't think that Ms G's credit relationship with BPF was rendered

unfair to her under Section 140A for either of the reasons above. But there is another reason, perhaps the main reason, why Ms G's representatives say the credit relationship with BPF was unfair to her. 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

BPF does not dispute, and I am satisfied, that Ms G'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 Ms G's representatives say that the Supplier did exactly that at the Time of Sale – saying, in summary, that Ms G 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 Ms G 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 Ms G 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 Ms G, 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 Ms G 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 BPF and Ms G rendered unfair?

Having found that it was possible that the Supplier breached Regulation 14(3) of the Timeshare Regulations at the Time of Sale, I now need to consider what impact that breach had on the fairness of the credit relationship between Ms G and BPF 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 Ms G and BPF 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.

To help me decide this point, I've carefully considered what Ms G has said in the course of her complaint about how the membership was sold to her and her motivation for purchasing it.

I would note first of all that the evidence in this respect is quite limited. Within the Letter of Complaint, it is said that Ms G was told that she had purchased an investment that would increase in value. There was no further detail underpinning these statements within the Letter of Complaint, which are rather generic in nature. In fact, such assertions were made in an identical fashion by PR1 in a number of other complaints.

When referring the complaint to us, PR2 included a statement from Ms G with her recollections from the Time of Sale and highlights that within it she says:

> "*4. We were told to look upon it as a mortgage for a property that we owned and whilst we owned the property, we could earn money from it by renting out, then after the contract term, the property would be partly ours.*
>
> *5. My husband was convinced that the ownership was a good investment at the time, from how the CLC sales staff described it to us*."

I'm mindful that Ms G only provided these comments in October 2024 – almost eight years after the Time of Sale, subsequent to the judgment in *Shawbrook & BPF v FOS* and some three years after the complaint was originally made.

I'm aware that the more time that passes between a complaint and the event complained about, the more risk there is of recollections being vague, inaccurate and influenced by discussions with others. It seems to me that there's a high risk that this is what has happened in this case.

I note that, in this statement, Ms G has made little reference to any of the other matters of complaint raised in the Letter of Complaint. So this statement does not corroborate a substantial portion of the complaint as originally made. Both the statement as a whole and those parts that relate to the investment element lack detail.

In particular, Ms G only makes reference to one full membership product from the Supplier – when she had held two. She seems to recall trading up from her trial membership to the Signature Collection. In fact, she traded in a fractional club membership at the Time of Sale. Given the type of membership she already held with the Supplier – in which she held a share in the net sale proceeds of a holiday property – it is surprising that she makes no reference to this, or to increasing her investment as she was effectively doing through the change. This is somewhat inconsistent, in my view, with the notion that the investment element was a motivating factor in Ms G's decision-making.

I am also mindful that the change was an upgrade – the Signature Collection offered Ms G access to a higher standard of accommodation, along with other benefits including a preferential right to stay in the Allocated Property and she significantly increased the number of points she held with which to purchase holidays – some or all of which would likely have been motivating factors in her decision but which, somewhat unusually to my mind, are not mentioned at all in her brief statement.

In this case, especially in the absence of an earlier account nearer to the Time of Sale or the time the complaint was first made and in light of all I've said above, I simply can't place significant weight on these recollections. I find it difficult to explain why Ms G didn't, at the outset, just say that she had been told she would make more money than she put in and this is why she purchased Signature Collection membership if this is what happened. In the circumstances, and on balance, I think there's a high risk that Ms G was influenced by discussions she had with others or the widespread publicity following the outcome of the judicial review.

Put simply, I can't put enough weight on Ms G's account to conclude that the prospect of a financial gain from Signature Collection membership was an important and motivating factor when she decided to go ahead with her purchase. I accept she may well have been interested in a share in the Allocated Property, which would not be surprising given the nature of the product at the centre of this complaint. But as Ms G herself doesn't persuade me that her purchase was motivated by his 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 she ultimately made.

On balance, therefore, even if the Supplier had marketed or sold the Signature Collection membership as an investment in breach of Regulation 14(3) of the Timeshare Regulations, I am not persuaded that Ms G'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 her 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 Ms G and BPF was unfair to her even if the Supplier had breached Regulation 14(3).

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

PR1 said that Ms G was not given sufficient information at the Time of Sale by the Supplier about the ongoing costs of Signature Collection membership. They also said that the contractual terms governing the ongoing costs of membership and the consequences of not meeting those costs were unfair contract terms.

As I've already indicated, the case law on Section 140A makes it clear that it does not automatically follow that regulatory breaches create unfairness for the purposes of the unfair relationship provisions. The extent to which such mistakes render a credit relationship unfair must also be determined according to their impact on the complainant.

I acknowledge that it is also possible that the Supplier did not give Ms G sufficient information, in good time, on the various charges she could have been subject to as a Signature Collection member in order to satisfy the requirements of Regulation 12 of the Timeshare Regulations (which was concerned with the provision of 'key information'). But even if that was the case, I cannot see that the ongoing costs of membership were applied unfairly in practice. And as neither Ms G nor her representatives have persuaded me that she would not have pressed ahead with her purchase had the finer details of the Signature Collection's ongoing costs been disclosed by the Supplier in compliance with Regulation 12, I cannot see why any failings in that regard are likely to be material to the outcome of this complaint given its fact and circumstances.

As for the argument that there were one or more unfair contract terms in the Purchase Agreement, I can't see that any such terms were operated unfairly against Ms G 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'm not persuaded that any of the terms governing Signature Collection membership are likely to have led to an unfairness that warrants a remedy.

In conclusion, given the facts and circumstances of this complaint, I did not think that BPF acted unfairly or unreasonably when it dealt with Ms G's Section 75 claim, and I was not persuaded that BPF 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 could see no other reason why it would be fair or reasonable to direct BPF to compensate her.

BPF responded to the PD and accepted it.

PR2 also responded. It did not accept the PD and provided some further comments it wanted me to take into account.

Having received the relevant responses from both parties, 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 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.

PR2's further comments in response to the PD relate in the main to the issue of whether the credit relationship between Ms G and BPF was unfair. In particular, PR2 has provided further comments in relation to whether the membership was sold to Ms G as an investment at the Time of Sale. It has also now argued for the first time that the payment of a commission by BPF to the Supplier led to an unfair credit relationship.

As outlined in my PD, PR2 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 PR2's points raised in response.

Section 140A of the CCA: did BPF participate in an unfair credit relationship?

PR2 has highlighted under Section 140B (9) of the CCA, the burden of proof falls on BPF to disprove the allegation that its relationship with Ms G was unfair. I agree that this is correct, placing a burden on lenders during the process of litigation. That does not mean, though, that BPF – or I – should take a claim at face value. There remains an onus on Ms G to provide some evidence for the claim she is making, despite the overall burden of proof resting with BPF, 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 breach of Regulation 14(3) of the Timeshare regulations

In its response to my PD, PR2 has reasserted its view that the Supplier marketed the Signature Collection membership to Ms G as an investment and that this was a motivating factor in her decision.

I accepted in my PD that the membership may well have been marketed as an investment to Ms G 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 representative may have positioned Signature Collection membership as an investment, 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. PR2'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 G to enter into the Purchase Agreement and the Credit Agreement remains an important consideration.

In my PD I explained the reasons why I didn't think any breach of Regulation 14(3) had led Ms G to proceed with her purchase. In short, I was not persuaded that her decision was 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 G in the course of her complaint. I recognise PR2 has interpreted Ms G'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.

PR2 objects to the approach I've taken in assessing this aspect of the complaint, believing that I have detracted from the judgment in *Shawbrook & BPF v FOS*[1] and the case law that contributed to it, by requiring Ms G to have been "primarily or mainly motivated" by the investment element in order to uphold the complaint. But I did not make such a finding. I said that, in my view, Ms G was highly motivated by the holiday options offered by the Supplier – 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 purchase of the Signature Collection membership 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 breach of Regulation 14(3), if there was one, was material to Ms G's decision to purchase the Signature Collection membership.

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

PR2 says that a payment of commission from BPF to the Supplier at the

[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').

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 Ms G in arguing that her credit relationship with BPF 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 BPF and Supplier were tied to one another contractually or commercially in a way that wasn't properly disclosed to Ms G, 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 Ms G into a credit agreement that cost disproportionately more than it otherwise could have.

I acknowledge that it's possible that BPF 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 BPF 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 Ms G.

In stark contrast to the facts of Mr Johnson's case, the amount of commission paid by BPF to the Supplier for arranging the Credit Agreement that Ms G entered into wasn't high. At £749.15, it was only 2.5% of the amount borrowed and even less than that (2.32%) as a proportion of the charge for credit. So, had she known at the Time of Sale that the Supplier was going to be paid a flat rate of commission at that level, I'm not currently persuaded that she either wouldn't have understood that or would have otherwise questioned the size of the payment at that time. After all, Ms G wanted Signature Collection membership and had no obvious means of her own to pay for it. And at such a low level, the impact of commission on the cost of the credit she needed for a timeshare she wanted doesn't strike me as disproportionate. So, I think she would still have taken out the loan to fund her purchase at the Time of Sale had the amount of commission been disclosed.

What's more, based on what I've seen so far, the Supplier's role as a credit broker wasn't a separate service and distinct from its role as the seller of timeshares. It was simply a means to an end in the Supplier's overall pursuit of a successful timeshare sale. I can't see that the Supplier gave an undertaking – either expressly or impliedly – to put to one side its commercial interests in pursuit of that goal when arranging the Credit Agreement. And as it wasn't acting as an agent of Ms G 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 BPF were likely to have led to a sufficiently extreme inequality of knowledge that rendered the credit relationship unfair to Ms G.

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 Ms G and BPF 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

While I've found that Ms G's credit relationship with BPF wasn't unfair to her for reasons relating to the commission arrangements between it and the Supplier, two of the grounds on which I came to that conclusion also constitute separate and freestanding complaints to Ms G's complaint about an unfair credit relationship. So, for completeness, I've considered those grounds on that basis here.

The first ground relates to whether BPF is liable for the dishonest assistance of a breach of fiduciary duty by the Supplier because it took a payment of commission from BPF without

telling Ms G (i.e., secretly). And the second relates to BPF'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 Ms G 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 BPF 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 BPF's part is itself a reason to uphold this complaint because, for the reasons I also set out above, I think she would still have taken out the loan to fund her purchase at the Time of Sale had there been more adequate disclosure of the commission arrangements that applied at that time.

Conclusion

In conclusion, given the facts and circumstances of this complaint, I do not think that BPF acted unfairly or unreasonably when it dealt with Ms G's Section 75 claim, and I am not persuaded that BPF 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 BPF to compensate her.

My final decision

For the reasons I've explained, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms G to accept or reject my decision before 4 February 2026.

Ben Jennings
Ombudsman