

## The complaint

Mr A's complaint is, in essence, that Mitsubishi HC Capital UK Plc (the 'Lender') acted unfairly and unreasonably by (1) being party to an unfair credit relationship with him under Section 140A of the Consumer Credit Act 1974 (as amended) (the 'CCA') and (2) deciding against paying a claim under Section 75 of the CCA.

## What happened

I issued a provisional decision on Mr A's complaint on 8 December 2025, in which I set out the background to this matter and my provisional conclusions. A copy of that provisional decision is appended to and forms part of this final decision. For that reason, it's not necessary to go over all the details of the complaint again, but to summarise:

- Mr A was a long-term customer of a timeshare provider (the "Supplier") and had bought a number of products from it. His complaint concerned a timeshare purchase (the "Purchase Agreement") he had made on 25 May 2012 (the "Time of Sale"). This was financed by a loan (the "Credit Agreement") from the Lender, and the trade-in of his existing product(s) with the Supplier.
- The timeshare was a type of asset-backed timeshare which entitled Mr A to more than holiday rights. It also entitled him to a share in the proceeds of a property named on his purchase agreement (the "Allocated Property") after his contract came to an end.
- Mr A later complained, via a professional representative ("PR"), to the Lender about a number of concerns which included misrepresentations and a breach of contract by the Supplier giving him a claim against the Lender under Section 75 of the CCA, and matters giving rise to an unfair credit relationship between Mr A and the Lender within the meaning of Section 140A of the CCA.
- The Lender rejected the complaint, and it was referred to the Financial Ombudsman Service for an independent assessment.

In my provisional decision I didn't think the complaint should be upheld. My full reasoning can be found in the appended provisional decision, but again to summarise:

- Parts of Mr A's Section 75 claim were time-barred under the Limitation Act 1980, meaning it wouldn't be reasonable for the Lender to have considered alleged breaches of contract prior to 18 January 2015, or point of sale misrepresentations.<sup>1</sup> Mr A's allegations of breach of contract were mostly vague meaning it wasn't possible to identify particular breaches, and the example he had given of a specific breach of contract did not appear to have been one. I accepted Mr A may not have always been able to book the accommodation he wanted, but given accommodation

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<sup>1</sup> Though these could still be considered as relevant factors when determining the fairness of the credit relationship between the Lender and Mr A, which I went on to consider later in my provisional decision.

was subject to availability, I couldn't see this was a breach of the Purchase Agreement.

- The credit relationship between Mr A and the Lender had not been rendered unfair to him due to the alleged misrepresentations of the Supplier:
  - Some of the alleged misrepresentations were not misrepresentations because they were true, or were omissions which had not implied a false statement of fact by virtue of what had been left unsaid.
  - I didn't think the Supplier had given Mr A unqualified guarantees about the end date of his Fractional Club membership.
- The credit relationship between Mr A and the Lender had not been rendered unfair to him due to a breach by the Supplier of Regulation 14(3) of the Timeshare Regulations (selling or marketing the product to him as an investment):
  - I thought it was possible, even probable, that the Supplier had breached Regulation 14(3) of the Timeshare Regulations when selling the Fractional Club membership to Mr A. However, this breach needed to have been material to Mr A's purchasing decision.
  - I considered Mr A's testimony, which took the form of a witness statement which I thought was genuine and was based on notes made by one of PR's staff on a phone call with him. I thought it was likely Mr A had had input into the statement because it contained details of specific incidents which were not in PR's notes.
  - I thought Mr A's witness statement did not make the case that he'd been motivated to buy the Fractional Club membership by the prospect of it being an investment. It did not say this was a reason why he bought it, and in fact references to the product being an investment in PR's notes had not made it into the witness statement, which focused on holiday-related reasons for Mr A having made his purchase. I concluded that any breach by the Supplier of Regulation 14(3) was unlikely to have materially affected Mr A's purchasing decision. I thought it more likely he'd have gone ahead anyway.
- The credit relationship between Mr A and the Lender had not been rendered unfair to him for any of the other wrongs PR had alleged:
  - I didn't think Mr A's ability to exercise a choice to make his purchase had been significantly impaired by any pressure from the Supplier.
  - I hadn't seen any evidence to indicate the Lender had failed to carry out the checks it should have done before lending to Mr A and, even if it hadn't, no evidence had been submitted to show the Credit Agreement had been unaffordable for Mr A, which would need to have been demonstrated for a failing in this area to render his credit relationship unfair.
  - The interest rate of the Credit Agreement was not an unfair contract term. It was the main term setting the price of the loan and was displayed clearly and prominently.
  - I didn't think the Lender had broken the FCA's PRIN rules.

- While a commission of 10.3% of the amount borrowed had been paid by the Lender to the Supplier for arranging the Credit Agreement, I did not think the commission arrangements had led to a sufficiently extreme inequality of knowledge that rendered the credit relationship unfair to Mr A.

I asked the parties to the complaint to let me have any further submissions they wanted me to consider. PR said it disagreed with my provisional decision. I could summarise its arguments as follows:

- Just because Mr A may have had more than one motivation when going ahead with his purchase, didn't mean that the prospect of the product being an investment hadn't been material to his purchasing decision. It didn't matter if a different motivation, such as wanting more points to go on holiday, was the primary one. Other motivations could still be material, and it was this test of materiality which was the correct test when deciding if the Supplier's breach of Regulation 14(3) – which it was sure had occurred – which was the correct test when determining whether the credit relationship had been rendered unfair.
- The witness statement was, in essence, a more polished version of what had been written in PR's notes of its conversation with Mr A. Just because something was missing in the witness statement which had appeared in the notes, doesn't mean that it hadn't been important.
- In the witness statement, Mr A had referred to having an expectation of property value growth in relation to the Allocated Property. He had said he'd calculated later that the apartment would need to be worth over £1 million to break even. This shows he was looking at the purchase through the lens of investment – so clearly this had been a material factor in his purchasing decision.

The case has now been returned to me to review once more.

### **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 response from PR, 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.

PR's comments in response to the provisional decision relate only to the issue of whether the credit relationship between Mr A and the Lender was unfair. In particular, PR has provided further comments in relation to whether the membership was sold to Mr A as an investment at the Time of Sale, and what that meant for the fairness of the credit relationship.

As outlined in my provisional decision, 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 its response to my provisional decision. 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 provisional decision. So, I'll focus here on PR's points raised in response.

I'll say firstly that there are parts of PR's response I don't disagree with. I accept that a person can have more than one motivation for taking a decision, such as making a purchase, and that one or more of those motivations might be *material* to the decision. I also agree that the right test is to determine whether the Supplier's breach of Regulation 14(3) of the Timeshare Regulations (assuming such a breach had occurred) was material to Mr A's purchasing decision *in this case*.

There are parts of PR's submissions where I think it may be saying or suggesting that the fact of a breach of the relevant regulations by the Supplier *alone* may be enough to render the credit relationship between Mr A and the Lender unfair to him. I don't think that's right. To paraphrase something I explained in my provisional decision: the fact of the Supplier having done something wrong, doesn't automatically render the credit relationship between Mr A and the Lender unfair. It needs to be shown that the wrongdoing has led to detriment to Mr A. In this case, detriment would most obviously take the form of Mr A having made the purchase when he otherwise wouldn't have.

And that is the conclusion I was unable to reach in my provisional decision. I thought (and still think) the evidence points away from any breach by the Supplier of Regulation 14(3), having been material to Mr A's purchasing decision. PR has offered the explanation that the witness statement, which omitted some references from its notes to the product being an investment, had simply been a polished version of the notes, and that the removal of some parts didn't mean they hadn't been important. To that I would repeat that I think the evidence suggests Mr A had some input into the final witness statement. The inclusion of very specific facts and details of incidents which didn't appear in PR's notes, suggests strongly to me that this was the case. So I think it's probable that the removal of references to the product being an investment, and the additional emphasis on the purchase having been made for reasons relating to other benefits of the product, was influenced by Mr A. And I would say that Mr A is in the best position to know what was in his own mind at the Time of Sale. The changes between PR's notes and Mr A's final witness statement suggest that it was not investment that was a material motivator for him at that time.

Regarding PR's comments about Mr A having referred to an expectation of property value growth and his reflection after the purchase that it was unlikely he would break even, I don't think these necessarily speak to Mr A having been materially motivated by the prospect of the product being a profitable investment. Mr A was recalling what the Supplier had conveyed during the sales process – and while this might be evidence that the Supplier had marketed or sold the product in a way which was not in compliance with the regulations, it doesn't speak to Mr A having bought it for that reason. I accept that his later reflections show he was thinking *at that time* about the value of what he had bought, but I don't think they establish that he was materially motivated by the prospect of the product being an investment *at the Time of Sale*. And as I said in my provisional decision, the apparent fact that Mr A raised no concerns with the Supplier after reflecting in this way, suggests that making a profit from his purchase was not something that was important to him.

Ultimately, for the reasons I've explained, I don't think any breach by the Supplier of Regulation 14(3) of the Timeshare Regulations rendered the credit relationship between Mr A and the Supplier unfair to him.

## **My final decision**

For the reasons explained above, and in my appended provisional decision, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 5 February 2026.

A handwritten signature in blue ink, appearing to read 'Will Culley', written over a light blue horizontal line.

Will Culley  
**Ombudsman**

## **COPY OF PROVISIONAL DECISION**

I've considered the relevant information about this complaint.

Having done so, I've arrived at a different set of conclusions to our Investigator, so I'm issuing this provisional decision to give the parties to the complaint a further opportunity to provide submissions.

The deadline for both parties to provide any further comments or evidence for me to consider is 22 December 2025. Unless the information changes my mind, my final decision is likely to be along the following lines.

If I don't hear from Mr A, or if they tell me they accept my provisional decision, I may arrange for the complaint to be closed as resolved without a final decision.

### **The complaint**

Mr A's complaint is, in essence, that Mitsubishi HC Capital UK Plc (the 'Lender') acted unfairly and unreasonably by (1) being party to an unfair credit relationship with him under Section 140A of the Consumer Credit Act 1974 (as amended) (the 'CCA') and (2) deciding against paying a claim under Section 75 of the CCA.

### **What happened**

Mr A had a prior history of purchasing timeshares from a specific timeshare provider (the 'Supplier') in 2001 and 2003. It's unknown exactly what type of timeshare products Mr A had previously, but it seems that they were points-based timeshares, through which Mr A was entitled to book holiday accommodation using an annual allocation of 'points' which were provided for this purpose.

This complaint concerns a purchase he made on 25 May 2012 (the 'Time of Sale'), when he traded in his existing holdings for membership of a timeshare product I will call the 'Fractional Club'. He entered an agreement (the 'Purchase Agreement') with the Supplier to purchase 1,932 points in this club, at a cost of £29,253 (or £9,740 after trade-in).

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

Mr A paid for his Fractional Club membership by taking finance of £9,740 from the Lender, arranged by the Supplier (the 'Credit Agreement'). I understand this loan was repaid at some point in 2016.

Mr A – using a professional representative (the 'PR') – wrote to the Lender on 18 January 2021 (the 'Letter of Complaint') to complain about:

1. Misrepresentations by the Supplier at the Time of Sale giving him a claim against the Lender under Section 75 of the CCA, which the Lender failed to accept and pay.
2. A breach of contract by the Supplier giving him a claim against the Lender under Section 75 of the CCA, which the Lender failed to accept and pay.
3. The Lender being party to an unfair credit relationship under the Credit Agreement and related Purchase Agreement for the purposes of Section 140A of the CCA.

(1) Section 75 of the CCA: the Supplier's misrepresentations at the Time of Sale

Mr A says that the Supplier made a number of pre-contractual misrepresentations at the Time of Sale – namely that the Supplier:

1. told him that Fractional Club membership would come to an end on a specific date when that was not true.
2. told him that he was buying a part of a resort asset which was an investment and would grow in value like normal property when that was not true.
3. told him that he could sell the membership or that the Supplier would buy it back off him, when that wasn't true.
4. failed to inform him that if he died before the end of the membership, his children would inherit his liability to pay annual fees.

Mr A says that he has a claim against the Supplier in respect of one or more of the misrepresentations set out above, and therefore, under Section 75 of the CCA, he has a like claim against the Lender, who, with the Supplier, is jointly and severally liable to him.

(2) Section 75 of the CCA: the Supplier's breach of contract

Mr A says he found it difficult to book the holidays he wanted, due to a lack of availability. He was never able to book weekends in the UK, and his annual fees continued to rise despite him not being able to use the membership fully.

As a result of the above, Mr A says that he has a breach of contract claim against the Supplier, and therefore, under Section 75 of the CCA, he has a like claim against the Lender, who, with the Supplier, is jointly and severally liable to him.

(3) Section 140A of the CCA: the Lender's participation in an unfair credit relationship

The Letter of Complaint and subsequent communications from PR set out several matters which I've interpreted as reasons why Mr A considers that the credit relationship between him and the Lender was unfair to him under Section 140A of the CCA. In summary, they include the following:

1. Fractional Club membership was marketed and sold to him as an investment in breach of regulation 14(3) of the Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010 (the 'Timeshare Regulations'), and additionally it was an illegal product to promote to him as it was an Unregulated Collective Investment Scheme (UCIS), and similarly illegal for the Lender to have provided credit to fund Mr A's purchase.
2. He was pressured into purchasing Fractional Club membership by the Supplier.
3. The decision to lend was irresponsible because the Lender didn't carry out the right creditworthiness assessment required by the laws and guidance in place at the time.
4. The interest rate on the loan was extortionately high in comparison to the Bank of England base rate, meaning the interest rate was an unfair term under the Unfair Terms in Consumer Contract Regulations 1999 (UTCCR).
5. The Lender had breached the FCA Principles (PRIN), especially PRIN 2, 6, and 8, namely by:
  - a. Not conducting its business with skill, care and diligence.
  - b. Not paying due regard to the interests of its customers or treated them fairly.

c. Not managing conflicts of interest fairly.

6. The Lender had paid the Supplier a secret commission.

The Lender dealt with Mr A's concerns as a complaint and issued its final response letter on 1 October 2021, rejecting it on every ground.

Mr A then referred the complaint to the Financial Ombudsman Service. It was assessed by an Investigator who, having considered the information on file, considered it ought to be upheld on the basis the Supplier had marketed the Fractional Club membership to Mr A as an investment, and this had rendered the credit relationship between him and the Lender unfair.

The Lender disagreed with the Investigator's assessment and asked for an Ombudsman's decision – which is why it was passed to me. The Lender initially argued that the Financial Ombudsman Service did not have the jurisdiction to consider parts of the complaint, but following some correspondence prior to this decision, it is no longer pursuing this argument.

I could summarise the Lender's current arguments as follows:

- It questioned the authenticity of a witness statement PR had produced in November 2023 but had allegedly been completed by Mr A in December 2020, on which our Investigator had relied when arriving at his conclusions.
- There was nothing in Mr A's witness statement in any event which would indicate he was motivated to purchase Fractional Club membership because he thought it was an investment. The information available in the statement in fact suggested he was motivated by other factors, such as obtaining more points to go on holiday and pay less in annual fees. Additionally, it appeared Mr A had discovered later that figures pertaining to the product's investment potential had been false, but he had not raised concerns about this with the Supplier, suggesting it hadn't been a matter of importance to him.
- Regarding Mr A's concerns about holiday availability, he had only had three booking requests denied over a period of seven years. Regarding a specific incident in June 2016 when he had tried to visit his daughter in Almeria and not been able to book, the reason had been because the Supplier didn't have a resort in the area, but alternative locations had been offered.

### **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 OFT's Guidance for Credit Brokers and Intermediaries - 24 November 2011

The primary purpose of this guidance was to provide clarity for credit brokers and credit intermediaries as to the standards expected of them by the OFT when they dealt with actual

or prospective borrowers. Below are the most relevant paragraphs as they were at the relevant time:

- Paragraph 2.2
- Paragraph 3.7
- Paragraph 4.8

### **What I've provisionally 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.

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

But 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 Supplier's misrepresentations at the Time of Sale**

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As both sides may already know, a claim against the Lender under Section 75 essentially mirrors the claim Mr A could make against the Supplier. Certain conditions must be met if this protection is engaged – which are set out in the CCA. The Lender does not dispute that the relevant conditions are met in this complaint and I'm satisfied that they are. However, I don't think Mr A would have been able to make a successful claim under Section 75, for reasons I'll now explain.

At the time Mr A notified the Lender of his claim, in January 2021, I think it would have been time-barred under the Limitation Act 1980 ('LA').

The LA sets out limitation periods (time limits) for bringing various types of legal claim. If a claim is brought too late, the respondent is likely to have a complete defence to the claim on that basis. For claims relating to misrepresentation, the limit normally runs six years from the date a person suffers damage as a result of the misrepresentation – such as entering into a contract and incurring liabilities they wouldn't have otherwise.

This means the time to bring a claim for misrepresentation would have been six years from the Time of Sale, so the limitation period for such a claim would have expired in May 2018, several years before Mr A complained. It would appear then, that the respondent would have a complete defence to Mr A's claim.

However, the judgment in *Scotland & Reast* explains that, even if a limitation period has expired for a standalone misrepresentation claim, relevant misrepresentations that could be attributed to the Lender can be considered as part of the assessment of the unfairness of the credit relationship. So, I have gone on to consider those matters later in this decision.

### **Section 75 of the CCA: the Supplier's breach of contract**

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I've already summarised how Section 75 of the CCA works and why it can give Mr A a right of recourse against the Lender. So, it isn't necessary to repeat that here. The LA is also relevant to this part of Mr A's Section 75 claim – the limitation period for claims of breach of contract generally runs for six years from the date of the alleged breach. So this means any alleged breaches which occurred prior to 18 January 2015 would be time-barred.

I will say here that Mr A's allegations here are somewhat vague and the only *specific* incident where he has alleged a breach of contract in relation to not being able to book the accommodation he wanted, was a scenario in Summer 2016 in Almeria when he wanted to visit his daughter and was unable to secure accommodation in the city. This occurred within six years of him notifying the Lender of his claim, so it is not time-barred by the LA.

The Supplier has said the reason Mr A couldn't be accommodated in Almeria was because it had no resorts there, but that it offered alternatives and Mr A ended up staying somewhere on the Costa del Sol. Assuming this is correct, this doesn't sound unreasonable. Unless the Supplier held itself out as having accommodation in Almeria it's difficult to see how a failure to provide accommodation in that city could be a breach of contract. I've studied the Supplier's resorts brochure and this doesn't contain any accommodation in Almeria, so on the face of it the Supplier did not claim to be able to offer bookings there.

As for the rest of the allegations concerning availability, insofar as they relate to issues experienced from 18 January 2015 onwards, I would say that like any holiday accommodation, availability would not have been unlimited – given the higher demand at peak times, like school holidays, for instance. Some of the sales paperwork signed by Mr A stated that the availability of holidays was subject to demand. It also looks like he made use of his fractional points to take at least 17 weeks of holiday over the course of his membership. I accept that he may not have been able to take certain holidays. But I have not seen enough to persuade me that the Supplier had breached the terms of the Purchase Agreement. And given the requirement to pay annual fees was not linked to the extent to which a person used their membership, I'm unable to say that the Supplier invoicing Mr A for these fees was (or is) a breach of contract either.

Overall, therefore, from the evidence I have seen to date, I do not think the Lender is liable to pay Mr A any compensation for a breach of contract by the Supplier. And with that being the case, I do not think the Lender acted unfairly or unreasonably when it dealt with the Section 75 claim in question.

### **Section 140A of the CCA: did the Lender participate in an unfair credit relationship?**

I have already explained why I am not persuaded that the contract entered into by Mr A was misrepresented (or breached) by the Supplier in a way that makes for a successful claim under Section 75 of the CCA and outcome in this complaint. But Mr A also says that the credit relationship between him and the Lender was unfair under Section 140A of the CCA, when looking at all the circumstances of the case, including parts of the Supplier's sales process at the Time of Sale that he has concerns about. It is those concerns that I explore here.

I have considered the entirety of the credit relationship between Mr A and the Lender along with all of the circumstances of the complaint and I do not 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 Supplier's sales and marketing practices at the Time of Sale – which includes training material that I think is likely to be relevant to the sale; and
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.

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

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

Mr A's complaint about the Lender being party to an unfair credit relationship was also made for several reasons, all of which I set out at the start of this decision. Regarding the alleged misrepresentations which I referred to earlier, I don't think there was an actionable misrepresentation by the Supplier for the following reasons:

- PR says that the Supplier told Mr A that his membership had a guaranteed end date when that wasn't true. However, there's nothing in the contemporaneous documents dating to the Time of Sale which leads me to believe that unqualified guarantees would have been given that the membership would come to an end on a specific date. The documents explain the Allocated Property would be marketed for sale after a set time, and I can't see that Mr A was told anything different to that.
- Regarding the alleged failure of the Supplier to tell Mr A that, on his death, his children would become liable for the annual fees associated with the membership, I would say firstly that this is an alleged omission, and omissions do not, in most cases, amount to misrepresentations. But in any event, I can find no evidence in the documents relating to the Fractional Club that Mr A's liabilities in respect of the membership *would* in fact pass to his children if he were to die.
- Telling prospective members that they were buying a fraction or share of one of the Supplier's properties was not untrue. Mr A's share in the Allocated Property was clearly the purchase of a share of the net sale proceeds of a specific property in a specific resort. And while PR might question the exact legal mechanism used to give him that interest, it did not change the fact that he acquired such an interest. Similarly, it was not untrue to describe the product as an investment, because the product did incorporate an investment feature, though it would have been prohibited to market the product in that way (more on which below).
- Finally, it would not have been false for the Supplier to state that Mr A could sell the product, as according to the contemporaneous paperwork this was possible. These documents also state quite prominently that the Supplier did not operate any resale programme itself and would not buy back products except when traded in against another purchase.

I will move on now to the other reasons why Mr A claims the credit relationship between him and the Lender may have been rendered unfair.

In more recent submissions, PR has indicated that Mr A felt that he was pressured by the Supplier into purchasing Fractional Club membership at the Time of Sale. Mr A also makes this point in his witness statement. I acknowledge that Mr A may have felt worn down by a sales process that went on for a long time. But he has said little about what was said or done by the Supplier during his sales presentation that made him feel as though he had no choice but to purchase Fractional Club membership when he simply didn't want to. He was also given a 14-day cooling off period and hasn't given an explanation as to why he did not cancel his purchase during that time if he had only signed up due to having felt pressured to do so. And with that being the case, there is insufficient evidence to demonstrate that Mr A made the decision to purchase Fractional Club membership because his ability to exercise that choice was significantly impaired by pressure from the Supplier.

The PR says that the right creditworthiness or affordability checks weren't carried out before the Lender lent to Mr A. I haven't seen anything to persuade me that was the case in this complaint given its circumstances, and I note PR has referred to regulations which were not yet in place at the time this loan was agreed. 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 A was actually unaffordable before also concluding that he lost out as a result and *then* consider whether the credit relationship with the Lender was unfair to him for this reason. Again, from the information provided, I am not satisfied that the lending was unaffordable for Mr A. Very little information has been supplied to support this allegation. If there is any further information on this (or any other points raised in this provisional decision) that Mr A wishes to provide, I would invite him to do so in response to this provisional decision.

PR has said the interest rate of the loan was unfair under the UTCCR. I don't think this is correct, because the UTCCR specifically exempts terms which relate to the price of a contract, so long as those terms are in "plain, intelligible language". The interest rate is the main term setting the price of a loan, and in Mr A's Credit Agreement the rate was displayed clearly and prominently in the way the CCA requires it to be. I think it's difficult in the circumstances to see how the interest rate could be considered an unfair term.

Regarding the alleged breaches of the FCA's Principles, it's not clear to me from PR's submissions how it thinks the Lender breached PRIN. I have found its arguments around this somewhat difficult to follow. It appears to consider the Supplier's alleged misrepresentations (addressed above) are relevant to this issue, as well as the Lender being the Supplier's "exclusive bank". I think it is implying that the Supplier and Lender worked together to ensure Mr A was charged an "extortionate rate of interest." The Supplier had commercial arrangements with several lenders to provide finance for its products, so I don't think it can be right that the Lender was the Supplier's "exclusive bank", and given I think there's insufficient evidence to support the allegations of misrepresentation, I do not think PR's points here advance Mr A's complaint any further.

I'm not persuaded, therefore, that Mr A's credit relationship with the Lender was rendered unfair to him under Section 140A for any of the reasons above. But there is another reason, perhaps the main reason, why he says his credit relationship with the Lender was unfair to him. And that's the suggestion that Fractional Club membership was marketed and sold to him as an investment in breach of prohibition against selling timeshares in that way.<sup>2</sup>

#### Was Fractional Club membership marketed and sold at the Time of Sale as an investment in breach of regulation 14(3) of the Timeshare Regulations?

The Lender does not dispute, and I am satisfied, that Mr A's Fractional Club 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 membership of the Fractional Club 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."*

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<sup>2</sup> As mentioned earlier in this decision, PR also argued that the Fractional Club product was illegal to promote to Mr A because it was a UCIS. I understand PR is no longer pursuing this argument following clarification in the courts that the product is not defined as a UCIS.

But PR says that the Supplier did exactly that at the Time of Sale. So, that is what I have considered next.

The term “investment” is not defined in the Timeshare Regulations. In *Shawbrook & BPF v FOS*, the parties agreed that, 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*” at [56]. I will use the same definition.

As I’ve already indicated in this decision, Mr A’s share in the Allocated Property clearly, in my view, constituted an investment as it offered him the prospect of a financial return – whether or not, like all investments, that was more than what he first put into it. But 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 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 Club. They just regulated how such products were marketed and sold.

To conclude, therefore, that Fractional Club membership was marketed or sold to Mr A 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 him as an investment, i.e. told him or led him to believe that Fractional Club membership offered him 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 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 Fractional Club as an ‘investment’ or quantifying to prospective purchasers, such as Mr A, the financial value of his share in the net sales proceeds of the Allocated Property along with the investment considerations, risks and rewards attached to them. There were, for instance, disclaimers in the contemporaneous paperwork that state that Fractional Club membership was for the primary purpose of holidays and the Supplier made no representation as to the future value of the fractional asset. So, it’s *possible* that Fractional Club membership wasn’t marketed or sold to him as an investment in breach of Regulation 14(3).

On the other hand, I acknowledge that the Supplier’s training material left open the possibility that the sales representative may have positioned Fractional Club membership as an investment. In fact, some of the material relevant to the version of Fractional Club membership that Mr A purchased<sup>3</sup> appears explicitly to describe the product as an investment. And Mr A recalled the Supplier’s representative explaining to him that the Allocated Property would likely increase in value over time (implying he could make a financial gain). So, I accept that it’s equally possible, or even probable, that Fractional Club membership was marketed and sold to Mr A 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

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<sup>3</sup> The Supplier sold different variations of the same core product over time. It’s my understanding that the version purchased by Mr A was the first version of the product sold by the Supplier, sometimes called “FPOC1”.

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.

Was the credit relationship between the Lender and Mr A rendered unfair to him?

As the Supreme Court's judgment in *Plevin* makes clear, it does not automatically follow that regulatory breaches create unfairness for the purposes of Section 140A. Such breaches and their consequences (if there are any) must be considered in the round, rather than in a narrow or technical way.

And in light of what the courts had to say in *Carney* and *Kerrigan*, it seems to me that, if I am to conclude that a breach of Regulation 14(3) led to a credit relationship between Mr A and the Lender that was unfair to him and warranted relief as a result, whether the Supplier's breach of Regulation 14(3) led him to enter into the Purchase Agreement and the Credit Agreement is an important consideration.

I think it's worth dedicating some time at this point to the disputed witness statement supplied in 2023 by PR (but alleged to date to December 2020), and a set of handwritten notes, said to have been made by an employee of PR on a phone call with Mr A in November 2020. This set of notes has been received even more recently, in 2025.

The Lender is doubtful as to the authenticity of these documents, particularly the witness statement, which it is concerned was in fact written much more recently than 2020 due to a discrepancy in the document's metadata. I don't share the same concerns. My understanding of PR's process of taking on new clients, was that it would have a phone call with them, following which a witness statement would be produced. In this case, it appears PR had this phone call with Mr A in November 2020. Some of the notes of this call suggest a statement was to follow, and PR claims Mr A sent it the finalised statement in December 2020.

The handwritten notes appear likely to be genuine. They are untidy, abbreviated, appear rushed at points, and give the impression that the writer was trying to keep up with a phone conversation but wasn't always successful.

The witness statement includes the same core content as the handwritten notes, but with some changes and some additional detail which doesn't appear in the notes, such as the specific example of Mr A not being able to make a booking in Almeria, and also details of a meeting he had with the Supplier in Telford in the early 2000s. I think the most likely scenario is that the witness statement contains additional input from Mr A. After all, it seems less likely that PR would have been aware of specific details like the Almeria incident. On balance, I think this statement is a genuine account of Mr A's recollections of his experiences with the Supplier.

Unfortunately for Mr A, I think the witness statement (and in particular some of the changes to it as compared to the notes) does not suggest that the investment aspect of the Fractional Club product played a material part in his purchasing decision. As the Lender points out, the statement doesn't say this was a reason why he bought the product, and the emphasis is on other things which attracted him to the purchase. Crucially, in my view, there is the following difference between the notes PR made of the conversation, and the later statement:

PR noted the following:

*"rep[resentative] presented the benefits of fractional as more points, lower fees and property investment potential"*

While the equivalent part of the later witness statement stated:

*“...it was suggested that if I were to convert my points membership into a fractional ownership membership not only would I get more points, I would pay less management fees, and would be able to take more holidays. This sounded like a good idea.”*

This is the only part of the witness statement which focuses on Mr A's thoughts about the product, and in this he appears to have omitted the parts about “property investment potential” and focused instead on being able to take more holidays, noting that this sounded like a good idea. And this is entirely consistent with how Mr A used the Fractional Club membership and his previous memberships with the Supplier – he used them frequently to take holidays either by himself or with his children. The Lender also points out that Mr A appears to have raised no concerns when he realised on reflection that it would be effectively impossible to break even (let alone make a profit). While I think this is a secondary issue, it doesn't indicate that the investment angle was very important to Mr A.

In light of the above, I think it's difficult to reach a conclusion that the investment aspect of the Fractional Club product played a material part in Mr A's decision to purchase it. The evidence is consistent with him having gone ahead with the purchase to obtain more points and go on more holidays while paying lower management fees.

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 Mr A's decision to purchase Fractional Club 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 he would have pressed ahead with his purchase whether or not there had been a breach of Regulation 14(3). And for that reason, I do not think the credit relationship between Mr A and the Lender was unfair to him even if the Supplier had breached Regulation 14(3).

### **The payment of a commission by the Lender to the Supplier**

The PR says that a payment of commission from the Lender to the Supplier at the Time of Sale should lead me to uphold this complaint because, simply put, information in relation to that payment went undisclosed at the Time of Sale.

As both sides already know, the Supreme Court handed down an important judgment on 1 August 2025 in a series of cases concerned with the issue of commission: *Johnson v FirstRand Bank Ltd, Wrench v FirstRand Bank Ltd and Hopcraft v Close Brothers Ltd [2025] UKSC 33* ('Hopcraft, Johnson and Wrench').

The Supreme Court ruled that, in each of the three cases, the commission payments made to car dealers by lenders were legal, as claims for the tort of bribery, or the dishonest assistance of a breach of fiduciary duty, had to be predicated on the car dealer owing a fiduciary duty to the consumer, which the car dealers did not owe. A “disinterested duty”, as described in *Wood v Commercial First Business Ltd & ors and Business Mortgage Finance 4 plc v Pengelly* [2021] EWCA Civ 471, is not enough.

However, the Supreme Court held that the credit relationship between the lender and Mr Johnson was unfair under Section 140A of the CCA because of the commission paid by the lender to the car dealer. The main reasons for coming to that conclusion included, amongst other things, the following factors:

1. The size of the commission (as a percentage of the total charge for credit). In

Mr Johnson's case it was 55%. This was "so high" and "a powerful indication that the relationship...was unfair" (see paragraph 327);

2. The failure to disclose the commission; and
3. The concealment of the commercial tie between the car dealer and the lender.

The Supreme Court also confirmed that the following factors, in what was a non-exhaustive list, will normally be relevant when assessing whether a credit relationship was/is unfair under Section 140A of the CCA:

1. The size of the commission as a proportion of the charge for credit;
2. The way in which commission is calculated (a discretionary commission arrangement, for example, may lead to higher interest rates);
3. The characteristics of the consumer;
4. The extent of any disclosure and the manner of that disclosure (which, insofar as Section 56 of the CCA is engaged, includes any disclosure by a supplier when acting as a broker); and
5. Compliance with the regulatory rules.

From my reading of the Supreme Court's judgment in *Hopcraft, Johnson and Wrench*, it sets out principles which apply to credit brokers other than car dealer-credit brokers. So, when considering allegations of undisclosed payments of commission like the one in this complaint, *Hopcraft, Johnson and Wrench* is relevant law that I'm required to consider under Rule 3.6.4 of the Financial Conduct Authority's Dispute Resolution Rules ('DISP').

But I don't think *Hopcraft, Johnson and Wrench* assists Mr A in arguing that his credit relationship with the Lender was unfair to him for reasons relating to commission given the facts and circumstances of this complaint.

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 Mr A, 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 Mr A into a credit agreement that cost disproportionately more than it otherwise could have.

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

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

In stark contrast to the facts of Mr Johnson's case, the amount of commission paid by the Lender to the Supplier for arranging the Credit Agreement that Mr A entered into wasn't high. At £998.35, it was only 10.3% of the amount borrowed and even less than that (5.61%) as a proportion of the charge for credit. So, had he 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 he either wouldn't have understood that or would have otherwise questioned the size of the payment at that time. After all, Mr A wanted Fractional Club membership and had no obvious means of his own to pay for it. And at such a low level, the impact of commission on the cost

of the credit he needed for a timeshare he wanted doesn't strike me as disproportionate. So, I think he would still have taken out the loan to fund his 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 Mr A but as the supplier of contractual rights he obtained under the Purchase Agreement, the transaction doesn't strike me as one with features that suggest the Supplier had an obligation of 'loyalty' to him when arranging the Credit Agreement and thus a fiduciary duty.

Overall, therefore, I'm not currently persuaded that the commission arrangements between the Supplier and the Lender were likely to have led to a sufficiently extreme inequality of knowledge that rendered the credit relationship unfair to Mr A.

### **Section 140A: Conclusion**

In conclusion, therefore, given all of the facts and circumstances of this complaint, I don't think the credit relationship between the Lender and Mr A was unfair to him for the purposes of Section 140A. And taking everything into account, I think it's fair and reasonable to reject this aspect of the complaint on that basis.

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

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While I've found that Mr A's credit relationship with the Lender wasn't unfair to him 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 Mr A'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 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 Mr A (i.e., secretly). And the second relates to the Lender's compliance with the regulatory guidance in place at the Time of Sale insofar as it was relevant to disclosing the commission arrangements between them.

However, for the reasons I set out above, I'm not persuaded that the Supplier – when acting as credit broker – owed Mr A 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 him. And while it's possible that the Lender failed to follow the regulatory guidance in place at the Time of Sale insofar as it was relevant to disclosing the commission arrangements between it and the Supplier, I don't think any such failure on the Lender's part is itself a reason to uphold this complaint because, for the reasons I also set out above, I think he would still have taken out the loan to fund his purchase at the Time of Sale had there been more adequate disclosure of the commission arrangements that applied at that time.

### **Conclusion**

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In conclusion, given the facts and circumstances of this complaint, I do not think that the Lender acted unfairly or unreasonably when it dealt with Mr A's Section 75 claim, and I am not persuaded that the Lender was party to a credit relationship with him under the Credit Agreement that was unfair to him 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 him

If there is any further information on this complaint that Mr A wishes to provide, I would invite him to do so in response to this provisional decision.

### **My provisional decision**

For the reasons explained above, I'm not minded to uphold this complaint.

Will Culley  
**Ombudsman**