DRN-6062447

The complaint

Mr Z's complaint is, in essence, that Clydesdale Financial Services Limited trading as Barclays Partner Finance (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 claims under Section 75 of the CCA.

What happened

Mr Z purchased membership of a timeshare (the 'Destinations Club') from a timeshare provider (the 'Supplier') on 1 November 2011 (the 'Time of Sale'). He entered into an agreement with the Supplier to buy fractional rights of one week at a cost of £13,694 (the 'Purchase Agreement'). This gave him the right to book accommodation for one week each year at a selection of the Supplier's resorts.

Destinations Club membership was asset backed – which meant it gave Mr Z 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 his membership term ends.

Mr Z paid for his Destinations Club membership by taking finance of £13,694 from the Lender (the 'Credit Agreement').

Mr Z later went on holiday with the Supplier and initially agreed to purchase a further timeshare before changing his mind and cancelling within the cooling off period.

On 11 March 2012, Mr Z complained the Supplier. He said his understanding when he purchased was that he could book one week each year with the Supplier and could book additional holidays at a fixed price per week depending on the type of apartment (either with the Supplier or an affiliated provider). But he was unhappy because he had found that he could only book one week per year with the Supplier and all other bookings had to be via the affiliated provider, but the cost of this was not fixed. The Supplier responded to the complaint and explained how Destinations Club worked, and what Mr Z had been told at the Time of Sale (including that extra weeks could be purchased at variable, not fixed, prices depending on the resort and apartment booked).

Mr Z – using a professional representative (the 'PR') – wrote to the Lender on 27 August 2020 (the 'Letter of Complaint') to raise several different concerns. Since then, the PR has raised some further matters it says are relevant to the outcome of this complaint. As both sides are familiar with the concerns raised, it isn't necessary to repeat them in detail here beyond the summary above.

The Lender did not uphold Mr Z's complaint, so the PR referred it to the Financial Ombudsman Service. It was assessed by an Investigator who, having considered the information on file, rejected the complaint on its merits.

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

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 Office of Fair Trading's Irresponsible Lending Guidance – 31 March 2010

The primary purpose of this guidance was to provide greater clarity for businesses and consumer representatives as to the business practices that the Office of Fair Trading (the 'OFT') thought might have constituted irresponsible lending for the purposes of Section 25(2B) of the CCA. Below are the most relevant paragraphs as they were at the relevant time:

- Paragraph 2.2
- Paragraph 2.3
- Paragraph 5.5

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 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. Having done so, I've reached the same decision as that which I outlined in my provisional decision – and for broadly the same reasons. A copy of my provisional findings is below. As such, I do not uphold this complaint.

START OF COPY OF PROVISIONAL FINDINGS

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") if there is an actionable misrepresentation and/or breach of contract by the supplier.

Certain conditions must be met if the protection afforded to consumers is engaged, including, for instance, the cash price of the purchase and the nature of the arrangements between the parties involved in the transaction. The Lender doesn't dispute that the relevant conditions are met. But for reasons I'll come on to below, it isn't necessary to make any formal findings on them here.

It was said in the Letter of Complaint that Destinations Club membership had been misrepresented by the Supplier at the Time of Sale because Mr Z was told by the Supplier that Destinations Club membership had a guaranteed end date when that was not true.

Neither the PR nor Mr Z have set out in any detail what words and/or phrases were allegedly used by the Supplier to misrepresent Destinations Club for the reason above. However, the PR says that such representations were untrue because the Allocated Property was legally owned by a trustee and there was no indication of what duty of care it had to actively market and sell the property. Further, there is no guarantee that any sale will result at all, leaving prospective members to pay their annual management charge for an indefinite and unspecified period.

However, I cannot see the alleged misrepresentation would have been untrue at the Time of Sale even if it were said. It seems to me that it reflects the main thrust of the contract Mr Z entered into. And while, under the relevant Destinations Club Rules, the sale of the Allocated Property could be postponed for up to two years , or longer if there were problems selling and the 'Owners'[1] agreed, or for an otherwise specified period provided there was unanimous agreement in writing from the Owners, that does not render the representation above untrue. So, I am not persuaded that the representation above constituted a false statement of fact even if it was made.

As for Mr Z's allegations that he was told Destination Club membership worked in a different way to how it does, I am not persuaded that the Supplier did misrepresent that. It seems more likely that there was a misunderstanding than a misrepresentation, which the Supplier cleared up in 2012 when Mr Z complained to it directly.[2]

So, while I recognise that Mr Z - and the PR - have concerns about the way in which Destinations Club membership was sold by the Supplier, when looking at the claim under Section 75 of the CCA, I can only consider whether there was a factual and material misrepresentation by the Supplier. For the reasons I've set out above, I'm not persuaded that there was. And that means that I don't think that the Lender acted unreasonably or unfairly when it dealt with this Section 75 claim.

Section 75 of the CCA: the Supplier's Breach of Contract

I have already summarised how Section 75 of the CCA works and why it gives consumers a right of recourse against a lender. So, it is not necessary to repeat that here other than to say that, if I find that the Supplier is liable for having breached the Purchase Agreement, the Lender is also liable.

[1] Those who owned fractional rights in the Allocated Property.
[2] For example, in its response the Supplier pointed out that Mr Z was shown examples of holidays he could book which had various prices (including higher prices), that differed to the two amounts (for a one bedroom and two bedroom apartment) that Mr Z recalled.

Mr Z says that Destinations Club membership did not provide the benefits he was promised at the Time of Sale. This suggests that the Supplier was not living up to its end of the bargain, potentially breaching the Purchase Agreement. But as mentioned above I am not persuaded that the Supplier did this, nor that there was a breach of contract because of it.

So, from the evidence I have seen, I do not think the Lender is liable to pay Mr Z 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 in relation to this aspect of the complaint either.

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

I've already explained why I'm not persuaded that Destinations Club 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 Mr Z and the Lender along with all of the circumstances of the complaint, I don't think the credit relationship between them was likely to have been rendered unfair for the purposes of Section 140A. When coming to that conclusion, and in carrying out my analysis, I have looked at:

1. The standard of the Supplier's commercial conduct – which includes its sales and marketing practices at the Time of Sale along with any relevant training material.

2. The provision of information by the Supplier at the Time of Sale, including the contractual documentation and disclaimers made by the Supplier.

3. The commission arrangements between the Lender and the Supplier at the Time of Sale and the disclosure of those arrangements.

4. Evidence provided by both parties on what was likely to have been said and/or done at the Time of Sale.

5. The inherent probabilities of the sale given its circumstances.

6. Where relevant, any existing unfairness from a related credit agreement.[3]

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

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

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

They include allegations that:

1. Mr Z was pressured by the Supplier into purchasing Destinations Club membership at the Time of Sale.

2. The right checks weren't carried out before the Lender lent to Mr Z.

[3] There was no related credit agreement in this case.

3. The loan interest was excessive.

4. The Lender paid commission to the Supplier for arranging the Credit Agreement but did not tell Mr Z about this.[4]

However, as things currently stand, none of strikes me as a reason why this complaint should succeed.

I acknowledge that Mr Z may have felt weary after a sales process that went on for a long time. But he says little about what was said and/or done by the Supplier during his sales presentation that made him feel as if he had no choice but to purchase Destinations Club membership when he simply did not want to. Mr Z was also given a 14-day cooling off period and he has not provided a credible explanation for why he did not cancel his membership during that time. And with all of that being the case, there is insufficient evidence to demonstrate that Mr Z made the decision to purchase Destinations Club membership because his ability to exercise that choice was significantly impaired by pressure from the Supplier.

I haven't seen anything to persuade me that the right checks weren't carried out by the Lender given this complaint's circumstances. But even if I were to find that the Lender failed to do everything it should have when it agreed to lend (and I make no such finding), I would have to be satisfied that the money lent to Mr Z 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. But from the information provided, I am not satisfied that the lending was unaffordable for Mr Z.

I don't think the rate of interest was excessive, compared either to other rates available from other point-of-sale lenders or on the open market, so I can't say it would be fair or reasonable to tell the Lender to do anything because of this.

Overall, therefore, I don't think that Mr Z'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 why the PR now says the credit relationship with the Lender was unfair to him. And that's the suggestion that Destinations Club membership was marketed and sold to him as an investment in breach of the prohibition against selling timeshares in that way.

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

The Lender does not dispute, and I am satisfied, that Mr Z's Destinations 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 Destinations Club membership as an investment. This is what the provision said at the Time of Sale:

> *"A trader must not market or sell a proposed timeshare contract or long-term holiday product contract as an investment if the proposed contract would be a regulated contract."*

But the PR and Mr Z say that the Supplier did exactly that at the Time of Sale – saying, in summary, that he was told by the Supplier that Destinations Club membership was the type of investment that would only increase in value.

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[4] See below section entitled, *"The provision of information by the Supplier at the Time of Sale"*.

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 net sale proceeds of the Allocated Property could constitute an investment as it offered Mr Z the prospect of a financial return – whether or not, like all investments, that was more than what he first put into it. But it is important to note at this stage that the fact that Destinations 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*.[5]

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

To conclude, therefore, that Destinations Club membership was marketed or sold to Mr Z 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 Destinations 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 Destinations 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, the Supplier made efforts to avoid specifically describing membership of the Destinations Club as an ‘investment’ or quantifying to prospective purchasers, such as Mr Z, 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 think that the Supplier’s sales process left open the possibility that the sales representative may have positioned Destinations Club membership as an investment. So, I accept that it’s equally possible that Destinations Club membership was marketed and sold to Mr Z as an investment in breach of Regulation 14(3).

However, whether 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 issue for the purposes of this decision.

[5] The PR has argued that Destinations Club membership amounted to an Unregulated Collective Investment Scheme, however this was considered and rejected in the judgment in *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).

Was the credit relationship between the Lender and Mr Z 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 Mr Z and the Lender under the Credit Agreement and related Purchase Agreement as the case law on Section 140A makes it clear that regulatory breaches do not automatically create unfairness for the purposes of that provision. Such breaches and their consequences (if there are any) must be considered in the round, rather than in a narrow or technical way.

Indeed, it seems to me that, if I am to conclude that a breach of Regulation 14(3) led to a credit relationship between Mr Z and the Lender that was unfair to him and warranted relief as a result, it is important for me to consider whether the Supplier's breach of Regulation 14(3) led him to enter into the Purchase Agreement and the Credit Agreement.

On my reading of the evidence before me, the prospect of a financial gain from Destinations Club membership was not an important and motivating factor when Mr Z decided to go ahead with his purchase. I say this for the following reasons.

Mr Z's original complaint to the Supplier, around four months after the Time of Sale, set out what he was told about Destinations Club membership. It seems likely this reflects what was important to Mr Z at the Time of Sale. He does not mention Destinations Club membership being sold or marketed as an investment or that he hoped or expected a financial gain from making the purchase. He does say he *"invested £13,694"* into it, but I think he uses the word invested as a proxy for the word paid – not as per the definition of investment above. His use of the word invested here isn't enough to persuade me that he saw Destinations Club membership as a way of making a profit at that time. Indeed, it appears that Mr Z's goal when making the complaint to the Supplier was to give up his membership and get a refund (and in doing so give up on any possibility of a financial gain when the Allocated Property was sold). If making a profit was important to Mr Z, I would have expected him to have mentioned this when complaining to the Supplier, and perhaps mention being willing to give this up due to his dissatisfaction.

The Letter of Complaint, which I would expect to indicate Mr Z's concerns about what happened at the Time of Sale, does not mention the Supplier selling or marketing Destinations Club membership as an investment or that this was important to him. It merely alleges that it was in fact an Unregulated Collective Investment Scheme. But that is not the same thing.

A questionnaire completed by Mr Z and provided to the Financial Ombudsman Service on 19 May 2020 included the following questions and answers:

- *Q Did they inform you the ownership would increase in value, be an investment or be easy to sell (even back to the resort)?*
  A Yes, as property prices in line with the property prices in Spain.

- *Q Did the representatives inform you that the ownership was valuable and/or had monetary value of some kind?*
  A Yes, as the property prices in Spain were increasing in value.

I can see that these questions were not open questions but introduced the idea of Destinations Club membership increasing in value and being an investment. That could have influenced Mr Z's response. I am also mindful that this is the first evidence of Mr Z saying he expected to make a financial gain from the purchase. But this was provided many years after

the Time of Sale and was presumably completed after the Letter of Complaint (given this allegation is not included in the Letter of Complaint and the questionnaire was not provided to the Lender when the complaint was made).

A statement signed by Mr Z on 5 May 2021 said that he was told he would get his money back plus a profit when the Allocated Property was sold. And that this was the *"primary factor"* in Mr Z agreeing to the purchase. But again, this was many years after the sale took place and does not align with what Mr Z said in his complaint to the Supplier or what the PR said in the Letter of Complaint. It is hard for me to find it persuasive when Mr Z has gone from not mentioning that he saw Destinations Club as an investment (that would make a profit) for more than nine years following the sale, to saying this was the primary reason for the purchase.

So, it is not the case that Mr Z has consistently recalled being sold Destinations Club membership as an investment (as defined) and that this was why he bought it. This is only something he has said recently, after being asked leading questions about the purchase. Experience tells me 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/or influenced by discussion with others. In this case Mr Z's recollection of what happened at the Time of Sale appears to have evolved and expanded beyond what he originally told the Supplier in 2012 and what the PR put in the Letter of Complaint in 2020. And I find it difficult to understand why that would be the case, if making a financial gain from the purchase was a motivation for Mr Z at the Time of Sale.

With this in mind, I do not find Mr Z's recollections to be sufficiently plausible and persuasive for me to conclude that his purchase was motivated by the possibility of making a profit. So, I do not think a breach of Regulation 14(3) by the Supplier was likely to have been material to the decision he ultimately made.

On balance, therefore, even if the Supplier marketed or sold Destinations Club membership as an investment in breach of Regulation 14(3) of the Timeshare Regulations, I am not persuaded that Mr Z's decision to purchase Destinations 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 it is likely that he would have pressed ahead with his purchase regardless of whether there had been a breach of Regulation 14(3). And for that reason, I do not think the credit relationship between Mr Z and the Lender was unfair to him even if the Supplier did breach Regulation 14(3).

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

The PR says that Mr Z was not given sufficient information at the Time of Sale by the Supplier about Destinations Club membership, including about the ongoing costs and the fact that Mr Z's heirs could inherit these costs.

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 Mr Z sufficient information, in good time, on the various charges he could have been subject to as Destinations Club members 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 Mr Z nor the PR have persuaded me that he would not

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

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.

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).

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 Z 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 Z, 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 Z 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 Z.

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 Z entered into wasn't high. At £571.04, it was only 4.1% of the amount borrowed and even less than that (3.7%) as a proportion of the charge for credit. So, had Mr Z known at the Time of Sale that the Supplier was going to be paid a flat rate of commission at that level, I'm not persuaded that he either wouldn't have understood that or would have otherwise questioned the size of the payment at that time. After all, Mr Z wanted Destinations 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 Z but as the supplier of contractual rights that 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 Z.

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 Mr Z and the Lender under the Credit Agreement and related Purchase Agreement was unfair to him. And as things currently stand, I don't think it would be fair or reasonable that I uphold this complaint on that basis.

Commission: The Alternative Grounds of Complaint

While I've found that Mr Z 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 Z 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 Z (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 Z 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.

END OF COPY OF PROVISIONAL FINDINGS

The PR's response to my provisional findings about an unfair relationship

My role as an Ombudsman isn't to address every single point which has been made to date, but to decide what is fair and reasonable in the circumstances of this complaint. If I haven't commented on, or referred to, something that either party has said, this doesn't mean I haven't considered it. Rather, I've focused here on addressing what I consider to be the key issues in deciding this complaint and explaining the reasons for reaching my final decision.

The PR's further comments in response to the provisional decision mainly relate to the issue of whether the credit relationship between Mr Z and the Lender was unfair. In particular, the PR has provided further comments in relation to whether the membership was sold to Mr Z as an investment at the Time of Sale and this motivated his purchase.

As outlined in my provisional decision, the PR originally raised various other points of complaint, all of which I addressed at that time. But they didn't make any further comments in relation to those in their response to my provisional decision. Indeed, they haven't said they disagree with any of my provisional conclusions in relation to those other points. In light of this, 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 the PR's points about Destinations Club membership being sold as an investment and whether this motivated Mr Z's purchase.

As I explained in my provisional decision, while the Supplier's sales processes left open the possibility that the sales representative may have positioned Destinations Club membership

as an investment, it isn't necessary to make a finding on this as it is not determinative of the outcome of the complaint. I explained that Regulatory breaches do not automatically create unfairness and that such breaches and their consequences (if there are any) must be considered in the round, rather than in a narrow or technical way.

The PR's comments in this respect do not persuade me that I should uphold Mr Z's complaint, because they do not make me think it's any more likely that the Supplier's breach of Regulation 14(3) (if one occurred) led Mr Z to enter into the Purchase Agreement and the Credit Agreement. The PR disagrees with how I have interpreted the evidence – but I must make my decision based on what is, in my opinion, fair and reasonable in the circumstances of this complaint. In my provisional decision, I explained the reasons why I didn't think Mr Z's purchase was motivated by the prospect of a financial gain (i.e., a profit). And although I have carefully considered the PR's comments in response to this, I'm not persuaded the conclusions I reached on this point were unfair or unreasonable.

So, ultimately, for the above reasons, along with those I already explained in my provisional decision, I remain unpersuaded that any breach of Regulation 14(3) was material to Mr Z's purchasing decision. And for that reason, I do not think the credit relationship between Mr Z and the Lender was unfair to Mr Z even if the Supplier breached Regulation 14(3).

Conclusion

In conclusion, I do not think that the Lender acted unfairly or unreasonably when it dealt with the relevant Section 75 claims, and I am not persuaded that the Lender was party to a credit relationship with Mr Z under the Credit Agreement that was unfair to him for the purposes of Section 140A of the CCA – nor do I see any other reason why it would be fair or reasonable to direct the Lender to compensate Mr Z.

My final decision

For the reasons I've explained, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr Z to accept or reject my decision before 6 February 2026.

Phillip Lai-Fang
Ombudsman