

The complaint

Ms M's complaint is, in essence, that Clydesdale Financial Services Limited trading as Barclays Partner Finance (the 'Lender') acted unfairly and unreasonably by being party to an unfair credit relationship with her under Section 140A of the Consumer Credit Act 1974 (as amended) (the 'CCA').

What happened

Ms M was a member of a timeshare provider (the 'Supplier') – having purchased a previous product from it in 2017. But the product at the centre of this complaint is her membership of a timeshare that I'll call the 'Fractional Club' – which she bought on 19 March 2018 (the 'Time of Sale') with another person, Ms P. They entered into an agreement with the Supplier to buy 1820 fractional points at a cost of £11,549 (the 'Purchase Agreement').

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

Fractional Club membership was paid for by Ms M taking finance of £11,549 from the Lender (the 'Credit Agreement').

Ms M – using a professional representative – (the 'PR') – wrote to the Lender on 28 March 2022 (the 'Letter of Complaint') to raise a number of different concerns. As those concerns haven't changed since they were first raised, and as both sides are familiar with them, it isn't necessary to repeat them in detail here beyond the summary above.

The Lender acknowledged the Letter of Complaint but didn't provide its final response within the usual timescales so Ms M referred her complaint to the Financial Ombudsman Service. It was assessed by an Investigator who, having considered the information on file, rejected the complaint on its merits.

Ms M disagreed with the Investigator's assessment and asked for an Ombudsman's decision and it was passed to me. I considered the matter and issued a provisional decision (the 'PD') dated 18 December 2025 the findings from which are set out below.

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

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

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

The CCA introduced a regime of connected lender liability under section 75 that affords consumers (“debtors”) a right of recourse against lenders that provide the finance for the acquisition of goods or services from third-party merchants (“suppliers”) in the event that there is an actionable misrepresentation and/or breach of contract by the supplier.

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

It was said in the Letter of Complaint that Fractional Club membership had been misrepresented by the Supplier at the Time of Sale because Ms M and Ms P were:

- 1. Told that they had purchased an investment that would “considerably appreciate in value”.*
- 2. Promised a considerable return on their investment because they were told that they would own a share in a property that would considerably increase in value.*
- 3. Told that they could sell their Fractional Club membership to the Supplier or easily to third parties at a profit.*
- 4. Made to believe that they would have access to “the holiday apartment” at any time all year round.*

However, neither points 1 nor 2 strike me as misrepresentations even if such representations had been made by the Supplier (which I make no formal finding on). Telling prospective members that they were investing their money because they were buying a fraction or share of one of the Supplier’s properties was not untrue. And even if the Supplier’s sales representatives went further and suggested that the share in question would increase in value, perhaps considerably so, that sounds like nothing more than a honestly held opinion as there isn’t any accompanying evidence to persuade me that the relevant sales representative(s) said something that, while an opinion, amounted to a statement of fact that they did not hold or could not have reasonably held.

As for points 3 and 4, while it’s possible that Fractional Club membership was misrepresented at the Time of Sale for one or both of those reasons, I don’t think it’s probable. They’re given little to none of the colour or context necessary to demonstrating that the Supplier made false statements of existing fact and/or opinion. And as there isn’t any other evidence on file to support the suggestion that Fractional Club membership was misrepresented for these reasons, I don’t think it was.

So, while I recognise that Ms M and the PR have concerns about the way in which Fractional 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 particular Section 75 claim.

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

I’ve already explained why I’m not persuaded that Fractional 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 Ms M 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. Evidence provided by both parties on what was likely to have been said and/or done at the Time of Sale;*
- 4. The commission arrangements between the Lender and the Supplier at the Time of Sale and the disclosure of those arrangements;*
- 5. 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 Ms M and the Lender.

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

Ms M's complaint about the Lender being party to an unfair credit relationship was made for several reasons.

The PR says, for instance, that the right checks weren't carried out before the Lender lent to Ms M. I haven't seen anything to persuade me that was the case in this complaint given its circumstances. But even if I were to find that the Lender failed to do everything it should have when it agreed to lend (and I make no such finding), I would have to be satisfied that the money lent to Ms M was actually unaffordable before also concluding that she lost out as a result and then consider whether the credit relationship with the Lender was unfair to them for this reason. I acknowledge that Ms M has said she was on benefits at the time and has referred to the worry about meeting the monthly payments. I asked the PR to provide evidence to establish whether the loan was unaffordable but they have failed to provide anything. And the information currently provided doesn't support a finding that the lending was unaffordable for Ms M.

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

The PR also says that there was one or more unfair contract terms in the Purchase Agreement. But as I can't see that any such terms were operated unfairly against Ms M and Ms P in practice, nor that any such terms led them to behave in a certain way to their detriment, I'm not persuaded that any of the terms governing Fractional Club membership are likely to have led to an unfairness that warrants a remedy.

Ms M and Ms P also say that they felt pressurised into signing forms. I acknowledge what they have said about Ms M having to move around a lot during the meeting because of her disability and being in obvious pain and discomfort. I don't doubt what she has said but her

statement doesn't identify anything said or done by the Supplier during their sales presentation that made them feel as if they had no choice but to purchase Fractional Club membership when they simply did not want to. And although they say they weren't given a cooling off period this was made clear in the contractual documentation and I am therefore satisfied they were given a 14-day cooling off period. And they have not provided a credible explanation for why they did not cancel their membership during that time if they only entered into it because they were pressured to do so.

And with all of that being the case, there is insufficient evidence to demonstrate that Ms M and Ms P made the decision to purchase Fractional Club membership because their ability to exercise that choice was significantly impaired by pressure from the Supplier.

Overall, therefore, I don't think that Ms M's credit relationship with the Lender was rendered unfair to her under Section 140A for any of the reasons set out above and referred to in the Letter of Complaint. But there is another reason, perhaps the main reason, why the PR says the credit relationship with the Lender was unfair to her. And that's the suggestion that Fractional Club membership was marketed and sold to her and Ms P 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 Ms M and Ms P'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 Fractional 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 says that the Supplier did exactly that at the Time of Sale – saying, in summary, that Ms M and Ms P were told by the Supplier that Fractional Club membership was the type of investment that would only increase in value.

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

A share in the Allocated Property clearly constituted an investment as it offered Ms M and Ms P the prospect of a financial return – whether or not, like all investments, that was more than what they first put into it. But it is important to note at this stage that the fact that Fractional 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 Ms M and Ms P as an investment in breach of Regulation 14(3), I have to be persuaded that it was

more likely than not that the Supplier marketed and/or sold membership to them as an investment, i.e. told them or led them to believe that Fractional Club membership offered them 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 Ms M and Ms P, the financial value of their share in the net sales proceeds of the Allocated Property along with the investment considerations, risks and rewards attached to them.

On the other hand, I acknowledge that the Supplier's sales process left open the possibility that the sales representative may have positioned Fractional Club membership as an investment. So, I accept that it's equally possible that Fractional Club membership was marketed and sold to Ms M and Ms P as an investment in breach of Regulation 14(3) as they have alleged.

However, whether, or not, there was a breach of the relevant prohibition by the Supplier is not ultimately determinative of the outcome in this complaint for reasons I will come on to shortly. And with that being the case, it's not necessary to make a formal finding on that particular issue for the purposes of this decision.

Would the credit relationship between the Lender and Ms M and Ms P have been rendered unfair to them had there been a breach of Regulation 14(3) of the Timeshare Regulations?

Having found that it was possible that the Supplier breached Regulation 14(3) of the Timeshare Regulations at the Time of Sale, I now need to consider what impact that breach had on the fairness of the credit relationship between Ms M and Ms P 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 Ms M and Ms P and the Lender that was unfair to them and warranted relief as a result, whether the Supplier's breach of Regulation 14(3) led them to enter into the Purchase Agreement and the Credit Agreement is an important consideration.

The PR has provided an unsigned and undated statement in August 2023 from Ms M and Ms P. However, whilst this has been provided late in the day the PR says it was completed on 11 September 2019 and as the footer of each page has that date on it I have no reason to question that the statement was completed on the date stated. This was only around one and a half years after Ms M and Ms P purchased Fractional Club membership so I think it probably is reasonably accurate as to their reasons for purchasing Fractional Club membership.

They only refer to Fractional Club membership as an investment once in the statement, when they say:

"It was sold on the basis of being the perfect climate for my disability and pain, giving us a good return for our investment and being very easy to sell or pass on as heritable property to

either of Mrs Pearson's two children and grandchildren and somewhere luxurious that we could all come on holiday together."

They go on to say:

"It would be in Tenerife where the climate would be even better for my fibromyalgia and sore bones!"

And:

"the slightly higher monthly payment would entitle us to a higher quality apartment on the ground floor for my impaired mobility."

The statement doesn't provide persuasive evidence that the reason they went ahead with the purchase was because of the gain or profit they might make when it came to an end. To the contrary, my reading of what Ms M and Ms P have said is that they bought it for other reasons such as the climate and nature of the accommodation they could access.

My finding that the prospect of a gain or profit wasn't a motivating factor in their decision to purchase membership doesn't mean they weren't interested in a share in the Allocated Property. After all, that wouldn't be surprising given the nature of the product at the centre of this complaint. But as Ms M and Ms P themselves don't persuade me that their purchase was motivated by their share in the Allocated Property and the possibility of a profit, I don't think a breach of Regulation 14(3) by the Supplier was likely to have been material to the decision they ultimately made.

On balance, therefore, even if the Supplier had marketed or sold the Fractional Club membership as an investment in breach of Regulation 14(3) of the Timeshare Regulations, I am not persuaded that Ms M and Ms P'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 they would have pressed ahead with their purchase whether, or not, there had been a breach of Regulation 14(3). And for that reason, I do not think the credit relationship between Ms M and the Lender was unfair to her even if the Supplier had breached Regulation 14(3).

Section 140A: Conclusion

Given all of the factors I've looked at in this part of my decision, and having taken all of them into account, I'm not persuaded that the credit relationship between Ms M and Ms P and the Lender under the Credit Agreement and related Purchase Agreement was unfair to them. And as things currently stand, I don't think it would be fair or reasonable that I uphold this complaint on that basis.

The Supplier's breach of Spanish Law and its implications on the Credit Agreement.

*In its letter to the Lender of 28 March 2022 the PR argued that because Ms M and Ms P obtained judgment against the Supplier in a Spanish Court which declared the Purchase Agreement a nullity they had the right to rescind the Credit Agreement and it should be treated as such – in keeping with the judgment of the UK's Supreme Court in *Durkin v DSG Retail* [2014] UKSC 21 ('Durkin').*

However, as the Lender hasn't been party to any court proceedings in Spain, it seems to me that there is an argument for saying that the Purchase Agreement is valid under English law for the purposes of Durkin. I also note that the Purchase Agreement is governed by English law. So, it isn't at all clear that Spanish law would be held relevant if the validity of the

Purchase Agreement were litigated between its parties and the Lender in an English court. For example, in Diamond Resorts Europe and Others (Case C-632/21), the European Court of Justice ruled that, because the claimant lived in England and the timeshare contract governed by English law, it was English law that applied, not Spanish, even though the latter was more favourable to the claimant in ways that resemble the matters seemingly relied upon by the PR in its letter.

Overall, therefore, in the absence of a successful English court ruling on a timeshare case paid for using a point-of-sale loan on similar facts to this complaint, and given the facts and circumstances of this complaint, I'm not persuaded that it would be fair or reasonable to uphold it for this reason"

I concluded that, given the facts and circumstances of this complaint, that the Lender hadn't acted unfairly or unreasonably when it dealt with Ms M's Section 75 claims and I wasn't persuaded that the Lender was party to a credit relationship with Ms M under the Credit Agreement that was unfair to her for the purposes of Section 140A of the CCA. And having taken everything into account, I could see no other reason why it would be fair or reasonable to direct the Lender to compensate her.

I gave both parties the opportunity of responding and providing any further information they wanted me to consider. The Lender responded and agreed with the PD. The PR also responded but did not accept the PD. They provided some further comments and evidence they wished to be considered including raising a new issue about undisclosed commission. I sent a side letter to both parties addressing that issue, explaining why I didn't consider this rendered the credit relationship unfair to Ms M. I gave both parties the opportunity of responding to that but neither party responded. The Lender responded and agreed with my side letter but the PR provided no response.

Having received the relevant responses from both parties, I'm now finalising my decision.

The legal and regulatory context

In considering what is fair and reasonable in all the circumstances of the complaint, I am required under DISP 3.6.4R to take into account: relevant (i) law and regulations; (ii) regulators' rules, guidance and standards; and (iii) codes of practice; and (where appropriate), what I consider to have been good industry practice at the relevant time.

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

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

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

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

The FCA's Principles

The rules on consumer credit sit alongside the wider obligations of firms, such as the

Principles for Businesses ('PRIN'). Set out below are those that are most relevant to this complaint:

- Principle 6
- Principle 7
- Principle 8

What I've decided – and why

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

Following the responses from both parties, I've considered the case afresh and having done so, I've reached the same decision as that which I outlined in my provisional findings, for broadly the same reasons.

Again, my role as an Ombudsman isn't to address every single point which has been made to date, but to decide what is fair and reasonable in the circumstances of this complaint. If I haven't commented on, or referred to, something that either party has said, this doesn't mean I haven't considered it.

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

The PR's further comments in response to the PD in the main relate to the issue of whether the credit relationship between Ms M and the Lender was unfair. In particular, the PR has provided further comments in relation to whether the membership was sold to Ms M (and Ms P) as an investment at the Time of Sale. And, as noted above, they've also now argued for the first time that the payment of a commission by the Lender to the Supplier led to an unfair credit relationship.

As outlined in my PD, 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 PD. Indeed, they haven't said they disagree with any of my provisional conclusions in relation to those other points. And since I haven't been provided with anything more in relation to those other points by either party, I see no reason to change my conclusions in relation to them as set out in my PD. So, I'll focus here on the PR's points raised in response.

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

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

I explained in the PD why I wasn't persuaded by what Ms M and Ms P had said that they were motivated to purchase Fractional Club membership because it was an investment. The PR disagrees with my finding about that but has not provided any new information or evidence that would lead me to change my finding on this but I will briefly comment on what they have said.

The PR says that I have proceeded on the basis that the prospect of a gain must have been the primary or decisive reason for the purchase when the relevant question is whether a representation concerning investment was capable of influencing Ms M's decision or formed part of the overall inducement to enter into the Purchase Agreement and Credit Agreement. The PR goes on to say that that I haven't addressed the correct counterfactual question which they say is 'would the client have proceeded in the absence of representations that

the product would provide a good return?’ The PR argues that given the nature of the commitment, long -term financial obligations and the difficulty of exit it is inherently plausible that the representations influenced the decision to proceed.

Contrary to what the PR has said I have not suggested that the prospect of a gain or profit must have been the primary reason for Ms M going ahead with the purchase and I have considered whether she would have gone ahead in the absence of representations about membership being an investment. I set out clearly that I didn’t consider this was a motivating factor and found that Ms M (and Ms P) would have pressed ahead with their purchase whether, or not, there had been a breach of Regulation 14(3) – in other words regardless of whether, or not, it had been sold as an investment. Nothing that the PR has said in response to my PD persuades me I should change my findings about this.

So, ultimately, for the above reasons, along with those I already explained in my PD, I remain unpersuaded that any breach of Regulation 14(3) was material to Ms M’s (and Ms P’s) purchasing decision.

The PR also said that in the judgment handed down in *Shawbrook & BPF v FOS*, it was not challenged that the product in question was marketed and sold as an investment. But, as I explained in my provisional decision, the Timeshare Regulations did not ban products such as the Fractional Club. They just regulated how such products were marketed and sold. And the judgment referred to did not make a blanket finding that all such products were mis-sold in the way the PR appears to be suggesting. Any complaint needs to be considered in the light of its specific circumstances.

So, as I said before, even if the Supplier had marketed or sold the membership as an investment in breach of Regulation 14(3) (which I still make no finding on here), I’m not persuaded Ms M’s decision to make the purchase was motivated by the prospect of a financial gain. So, I still don’t think the credit relationship between Ms M and the Lender was unfair to her for this reason.

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

As I said above, the PR raised a new complaint issue following my PD, saying 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. I set out my views on that in a side letter sent to the parties on 16 January 2026. As the Lender has agreed with what I said and Ms M has provided no response there is no reason for me to change my view, which I set out below.

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

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

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

other things, the following factors:

1. The size of the commission (as a percentage of the total charge for credit). In Mr Johnson's case it was 55%. This was "so high" and "a powerful indication that the relationship...was unfair" (see paragraph 327);
2. The failure to disclose the commission; and
3. The concealment of the commercial tie between the car dealer and the lender.

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

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

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

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

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 Ms M and nor have I seen anything that persuades me that the commission arrangement between them gave the Supplier a choice over the interest rate that led Ms M 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 Ms M.

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 Ms M and Ms P entered into wasn't high. At £288.73 it was only 2.5% of the amount borrowed. So, had she known at the Time of Sale that the Supplier was going to be paid a flat rate of commission at that level, I'm not persuaded that she either wouldn't have understood that or would have otherwise

questioned the size of the payment at that time.

After all, Ms M (and Ms P) wanted Fractional Club membership and she had no obvious means of her own to pay for it. And at such a low level, the impact of commission on the cost of the credit she needed for a timeshare she (and Ms P) wanted doesn't strike me as disproportionate. So, I think she would still have taken out the loan to fund the purchase at the Time of Sale had the amount of commission been disclosed.

What's more, based on what I've seen so far, the Supplier's role as a credit broker wasn't a separate service and distinct from its role as the seller of timeshares. It was simply a means to an end in the Supplier's overall pursuit of a successful timeshare sale. I can't see that the Supplier gave an undertaking – either expressly or impliedly – to put to one side its commercial interests in pursuit of that goal when arranging the Credit Agreement. And as it wasn't acting as an agent of Ms M but as the supplier of contractual rights she (and Ms P) obtained under the Purchase Agreement, the transaction doesn't strike me as one with features that suggest the Supplier had an obligation of 'loyalty' to her when arranging the Credit Agreement and thus a fiduciary duty.

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

Commission: The Alternative Grounds of Complaint

While I've found that Ms M's credit relationship with the Lender wasn't unfair to her for reasons relating to the commission arrangements between it and the Supplier, two of the grounds on which I came to that conclusion also constitute separate and freestanding complaints to Ms M'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 Ms M (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 Ms M a fiduciary duty. So, the remedies that might be available at law in relation to the payment of secret commission aren't, in my view, available to her. And while it's possible that 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 Ms M would still have taken out the loan to fund the purchase at the Time of Sale had there been more adequate disclosure of the commission arrangements that applied at that time.

Overall Conclusion

In conclusion, given the facts and circumstances of this complaint, I do not think that the Lender acted unfairly or unreasonably when it dealt with Ms M's Section 75 claims and I am not persuaded that the Lender was party to a credit relationship with Ms M under the Credit Agreement that was unfair to her for the purposes of Section 140A of the CCA. And having taken everything into account, I see no other reason why it would be fair or reasonable to direct the Lender to compensate her.

My final decision

I don't uphold this complaint for the reasons set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms M to accept or reject my decision before 10 March 2026.

Philip Gibbons
Ombudsman