DRN-6073550

The complaint

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

Background to this decision

I recently issued my provisional decision setting out the events leading up to this complaint and my intended conclusions on how I considered the dispute best resolved. I've reproduced that provisional decision here and it is incorporated as part of my overall findings. I invited both parties to let me have any further comments they wished to make in response, and I will address their responses later in this decision.

My provisional decision

Miss M held a trial membership with a timeshare provider (the 'Supplier'). While making use of that membership she attended a sales presentation by the Supplier, which led to her purchasing membership of a timeshare (the 'Fractional Club'). On 19 December 2018 (the 'Time of Sale') Miss M and her partner Mr T entered into an agreement (the 'Purchase Agreement') with the Supplier to buy 870 fractional points.

Miss M paid for Fractional Club membership by taking finance of £17,258 from the Lender (the 'Credit Agreement'). This included £4,299 used to repay finance taken out to pay for trial membership, which was 'traded in' towards the total cost of Fractional Club membership.

Fractional Club membership was asset backed – which meant it gave Miss M 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 her membership term ended.

On 31 January 2022, Miss M – using a professional representative (the 'PR') – wrote to the Lender to raise a number of different concerns (the 'Letter of Complaint'). 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.

As the PR received no response it referred matters to us. The Lender then dealt with Miss M's concerns as a complaint and issued its final response letter on 15 September 2022, rejecting on every ground.

After considering the information on file, our investigator rejected the complaint on its merits. Miss M and the PR disagreed with the investigator's assessment and asked for this review. In doing so, the PR asked that we consider whether any commission arrangement between the Lender and the Supplier had caused unfairness towards Miss M.

The legal and regulatory context

I'm required under DISP 3.6.4R[1] 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')[2]

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

- CONC 3.7.3R
- CONC 4.5.2G[3]
- CONC 4.5.3R
- The Creditworthiness Assessment provisions in CONC 5.2A

The FCA's Principles

The CONC provisions 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 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. Having done so, I'm not minded to uphold Miss M's complaint.

However, before I explain why, I want to make clear that my role as an ombudsman isn't to address every single point that has been made, but to review matters 'as a whole'. If I have not commented on, or referred to, something that either party has said, that doesn't mean I haven't 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 to engage section 75, including, for instance, the cash price of the purchase and the nature of the arrangements between the parties involved in the transaction. There's no dispute that the relevant conditions are met in this case.

[1] 'R' denotes a rule
[2] Found in the Financial Conduct Authority's (the 'FCA') Handbook of Rules and Guidance
[3] 'G' denotes guidance

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

1. Told she'd purchased an investment that would "*considerably appreciate in value*"
2. Promised a considerable return on that investment because she was told she would own a share in a property that would considerably increase in value
3. Told she could sell the Fractional Club membership to the Supplier or easily to third parties at a profit
4. Led to believe she'd have access to "*the holiday apartment*" at any time all year round

Neither points 1 nor 2 strike me as misrepresentations even if the Supplier made such representations (and I make no such finding). Telling prospective members they were making an investment because they were buying a fraction or share of one of the Supplier's properties wasn't untrue. And even if the Supplier's sales representatives went further and suggested that the share in question would increase in value, even considerably so, that sounds like nothing more than an honestly held opinion. There isn't any persuasive accompanying evidence that the relevant sales representative(s) said anything that amounts to a statement of fact in this respect.

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*. The points offer little to none of the colour or context necessary to demonstrating that the Supplier made false statements of fact. And as there isn't any other evidence on file to support the suggestion that Fractional Club membership was misrepresented for these reasons, I can't properly conclude that it was.

While I recognise that Miss 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'm not persuaded they demonstrate a factual and material misrepresentation by the Supplier. Of course, the Lender could have responded more promptly to the initial claim. But that didn't cause any particular detriment to Miss M, and apart from this I don't think the Lender acted unreasonably or unfairly when it dealt with her section 75 claim.

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

I've 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.

Having considered the entirety of the credit relationship between Miss 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 information the Supplier provided at the Time of Sale in relation to Fractional Club membership, including the contractual documentation and the Supplier's disclaimers;
3. Evidence provided by both parties on what was likely to have been said and/or done at the Time of Sale;

4. The inherent probabilities of the sale given its circumstances; and (when relevant)
5. Any existing unfairness from a related credit agreement.

I have then considered the impact of these on the fairness of the credit relationship between Miss M and the Lender given her circumstances at the Time of Sale.

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

Miss 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[4] weren't carried out before the Lender lent to Miss M. I haven't seen anything to persuade me that was the case in this complaint. Indeed the Lender has provided documents and income verification evidence that suggests it made proportionate checks. Further, from the information provided, I am not persuaded that the lending was unaffordable for Miss M. So I'm minded to say that the complaint falls some way short of establishing that Miss M's credit relationship with the Lender was unfair to her for this reason.

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 Miss M knew, among 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 any financial loss for Miss M, such that I might conclude the credit relationship in question was unfair on her as a result. With that being the case, I'm not persuaded 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 I can't see that any such terms were operated unfairly against Miss M in practice, or that any such terms led her to behave in a certain way to her 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.

I acknowledge that Miss M has said she was subjected to pressure during the sales process and made to sign documents on the same day. But she says little about what was said and/or done by the Supplier during the sales presentation that made her feel as if she had no choice but to purchase Fractional Club membership when she simply did not want to. She was also given a 14-day cooling off period and she has not offered any explanation for why she did not cancel her membership during that time. With all of that being the case, there is insufficient evidence to demonstrate that Miss M made the decision to purchase Fractional Club membership because her ability to exercise that choice was significantly impaired by pressure from the Supplier.

Overall, therefore, I don't think that Miss M's credit relationship with the Lender was rendered unfair to her under section 140A for any of the reasons above. I now turn to the suggestion that Fractional Club membership was marketed and sold to her as an investment in breach of prohibition against selling timeshares in that way.

[4] See CONC 5.2A

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

The Lender does not dispute, and I am satisfied, that Miss M'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. At the Time of Sale the provision said:

> *"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."*

The PR says in summary, that at the Time of Sale the Supplier told Miss M Fractional Club membership was the type of investment that would only increase in value.

The Timeshare Regulations don't define the term 'investment'. 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 constituted an investment as it offered Miss M the prospect of a financial return – whether or not, like all investments, she ended up with more than she 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. Rather, they regulated how such products should be marketed and sold.

To find the Supplier was in breach of Regulation 14(3) it has to be more likely than not that the Supplier marketed and/or sold membership to Miss M as an investment. That is, it told her or led her to believe that Fractional Club membership offered her the prospect of a financial gain (a profit) given the facts and circumstances of *this* complaint.

It's clear the Supplier made efforts to avoid specifically describing membership of the Fractional Club as an 'investment' or quantifying to prospective purchasers, such as Miss M, 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 could have positioned Fractional Club membership as an investment.

That doesn't mean that it's more likely than not that Fractional Club membership was marketed and sold to Miss M as an investment in breach of Regulation 14(3). However, it's not necessary for me to make a formal finding on that particular issue for the purposes of this decision. That's because other factors in this complaint mean that whether the Supplier breached the relevant prohibition is not ultimately determinative of the outcome in this complaint. I say this for the following reasons.

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

Whether or not the Supplier breached Regulation 14(3), I have to consider what impact such a breach would have on the fairness of the credit relationship between Miss M and the Lender under the Credit Agreement and related Purchase Agreement. 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.

It seems to me that, if I am to conclude that a breach of Regulation 14(3) led to unfairness in the credit relationship between Miss M and the Lender that warrants relief as a result, it's important to consider whether a breach of Regulation 14(3) led Miss M to enter into the Purchase Agreement and the Credit Agreement.

I'm conscious that the original Letter of Complaint makes no specific assertion about why Miss M decided to purchase Fractional Club membership. The submissions at that point focused on the use of the term 'investment'. It was only after our investigator issued their initial assessment that the PR provided Miss M's rather limited recollection that the Supplier led her to believe that Fractional Club membership offered her the prospect of a financial gain. And there simply isn't anything in her statement that speaks to this prospect being a reason for her decision to purchase membership.

As Miss M herself doesn't persuade me that her purchase was motivated by her 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 Miss M ultimately made. I think the evidence suggests she would have pressed ahead with her purchase whether or not there had been a breach of Regulation 14(3). And for that reason, I do not think the credit relationship between Miss M and the Lender was unfair to her even if the Supplier had breached Regulation 14(3).

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

The PR says that a payment of commission by 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, among 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 Miss 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 Miss M, 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 Miss 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 Miss M.

In 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 Miss M entered into wasn't high. At £690.32, it was only 4% of the amount borrowed and even less than that (3.7%) as a proportion of the charge for credit. So, had Miss M known at the Time of Sale that the Supplier was going to be paid a flat rate of commission at that level, I'm not currently persuaded that she either wouldn't have understood that or would have otherwise questioned the size of the payment at that time. After all, Miss M wanted Fractional Club membership and had no obvious means of her own to pay for it. And at such a low level, the impact of commission on the cost of the credit she needed for a timeshare she wanted doesn't strike me as disproportionate. So, I think she would still have taken out the loan to fund her purchase at the Time of Sale had the amount of commission been disclosed.

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

Overall, therefore, I'm not 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 Miss M.

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

Commission: The Alternative Grounds of Complaint

While I've found that Miss 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 could also constitute separate and freestanding complaints to Miss 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 Miss M (that is, 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 Miss 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 she would still have taken out the loan to fund her purchase at the Time of Sale had there been more adequate disclosure of the commission arrangements that applied at that time.

The alleged breach of Spanish Law and its implications on the Credit Agreement

The PR argues that, because the Purchase Agreement was unlawful under Spanish law in light of certain information failings by the Supplier, I should treat that agreement and the Credit Agreement as rescinded by Miss M and award her compensation accordingly – 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, and as I can't see that the Supplier (that is, the company that entered into the Purchase Agreement) is itself the subject of a Spanish court judgment in Miss M's favour, it seems to me there is an argument for saying the Purchase Agreement is valid under English law for *Durkin* purposes.

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.

While it seems Miss M made quite limited use of her Fractional Club points, she has gone some way to taking advantage of the Purchase and Credit Agreements. An English court might hesitate to uphold a claim for rescission of either agreement because there are equitable reasons to do so.

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 it would be fair or reasonable to uphold it for this reason.

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 Miss M's section 75 claim. I am not persuaded that the Lender was party to a credit relationship with her under the Credit Agreement and related Purchase 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.

Responses to my provisional decision

The Lender had nothing further to add to my intended conclusions. The PR, responding on Miss M's behalf, didn't accept my provisional decision. It provided some further comments and arguments it wished me to consider.

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

What I've decided – and why

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

I've read the PR's submissions in response to my provisional decision. Having done so, I don't consider the PR has said anything that I didn't take into account or explain in my provisional decision. Noting the sub-headings the PR has used in its submission, for ease of reading I will use those same sub-headings in my decision

Fractional ownership purchase and the witness statement

My provisional findings were that Miss M's Fractional Club membership did include an investment (a profit) element, that it was possible that it was marketed and sold to her in that way in breach of Regulation 14(3), but that there was no persuasive evidence that a profit motive had been a material factor in Miss M's decision to purchase membership.

The PR's latest submissions seek to make the point that Miss M's Witness Statement could not have been influenced by our investigator's assessment (which the PR says it didn't share with its client) or the judicial review judgment[5]. I should note that I made no reference to any judgment in the relevant section of my provisional decision. And I can't accept the PR's assertion that I have chosen to not place weight on the genuine recollections of Miss M. On the contrary, my findings specifically take into account Miss M's testimony, including the lack of any comment by Miss M on her purchase motivation.

The PR asserts that "*people expect appreciation because of factors like location, infrastructure development or amenities, improvements and renovations*", as well as "*the point that the properties would increase in value was implied by the overall behaviour of [the Supplier's] sales people…that these properties were in high demand, and that this purchase was a once in a lifetime deal, so that[the] clients had to make a decision quickly there and then*", and "[the] clients clearly stated the benefits that obviously convinced them to purchase, which include the potential gains from selling the apartment at the end."

This leads the PR to the conclusion that all of this means the investment element played an important part during the sales process in convincing Mr and Mrs H to purchase Fractional Club membership.

I don't find that a particularly persuasive line of argument. What Miss M said is an account of what she says she was told, rather than evidence of why she purchased. Within her testimony Miss M also mentions financial and other incentives offered to persuade her to purchase, as well as access to "*further benefits offered by the Fractional Property Owners Club membership.*"

I'm mindful here of what HHJ Waksman QC (as he then was) and HHJ Worster respectively had to say in *Carney*[6] (paragraph 51) and *Kerrigan*[7] (paragraphs 213 and 214) on causation. It seems to me that, if I am to conclude that a breach of Regulation 14(3) led to a credit relationship between Miss M and the Lender that was unfair to her and warranted relief as a result, whether any breach of Regulation 14(3) by the Supplier led Miss M to enter into the Purchase Agreement and the Credit Agreement is an important consideration.

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 make no finding on here), I'm not persuaded there's enough to enable me to find that Miss M's decision to make the purchase was motivated by

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[5] In this respect the PR refers to *R (on the application of Shawbrook Bank Ltd) v Financial Ombudsman Service Ltd and R (on the application of Clydesdale Financial Services Ltd (t/a Barclays Partner Finance)) v Financial Ombudsman Service* [2023] EWHC 1069 (Admin) ("*Shawbrook & BPF v FOS*").

[6] Carney v NM Rothschild & Sons Ltd [2018] EWHC 958 ("*Carney*").

[7] Kerrigan v Elevate Credit International Ltd [2020] EWHC 2169 (Comm) ("*Kerrigan*").

the prospect of a financial gain. So, I still don't think the credit relationship between Miss M and the Lender was unfair to her for this reason.

Substantial contradiction in the purchase documentation

The PR has highlighted what it considers conflicting information in the purchase documents about the sale date of the Allocated Property. It says the purchase documents include wording that refers to an automatic sale date in 19 years' time or later. However, other documents say that the trustee will start the sales process on the Allocated Property on 31 December 2033, being only 15 years after the Time of Sale.

It's possible that this apparent discrepancy simply allows for a period of time between the commencement of the sales process and its completion, rather than introduce any ambiguity.

But even if that were not the case, as the PR has pointed out, the usual remedy for ambiguity in terms in a consumer contract would be for that ambiguity to be interpreted in the consumer's favour. It does not mean the entire contract would be deemed unenforceable, or that the credit relationship between Miss M and the Lender is unfair as a result. And given that neither date has yet been reached, it isn't by any measure clear what date the Supplier would seek to rely upon. With this in mind, I'm not going to make any award or direction in relation to this aspect.

Undisclosed commissions

I have noted what the PR has said in this respect. My finding in relation to commission was not solely based on the level of that commission. The question I have sought to address is whether Miss M would have acted any differently had she known more about the payment of commission. As I said previously, I wasn't persuaded on this point. That remains the position.

I'm of course conscious that an assessment of whether a credit relationship was unfair under section 140A of the CCA takes into account the cumulative effect of any breaches or failings. Indeed, I said as much in my provisional decision. And I acknowledge that the PR believes it has done enough to show a pattern of behaviour and regulatory breaches that cumulatively speak to a finding that the credit relationship was unfair. But given all of the factors I've looked at in my decision, and having taken all of them into account, I remain unpersuaded that the credit relationship between Miss M and the Lender should be deemed unfair.

My final decision

Overall, there is nothing that the PR has said in response to my provisional decision that points me towards reaching a different set of conclusions, or gives me good reason not to adopt my provisional findings in full as part of this final decision.

Accordingly, for the reasons I've set out here and in my provisional decision, I remain of the opinion that the Lender did not act unfairly or unreasonably when it dealt with Miss M's section 75 claim, or that it was party to a credit relationship with her that was unfair for the purposes of section 140A of the CCA.

It follows that my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss M to accept or reject my decision before 11 February 2026.

Niall Taylor
Ombudsman