DRN-6081286

The complaint

Mr V complains Mitsubishi HC Capital UK PLC (the "Lender") has failed to honour a claim under Section 75 of the Consumer Credit Act 1974 (the "CCA") and has participated in an unfair credit relationship with him under Section 140A of the CCA.

Mr V is represented in his complaint by a professional representative ("PR").

What happened

I issued a provisional decision on Mr V's complaint on 25 November 2025, in which I set out the background to the case and my provisional findings on it. A copy of that provisional decision is appended to, and forms a part of, this final decision, so it's not necessary to go over the details again. However, in very brief summary:

- Mr V entered an agreement to buy a timeshare (the "Purchase Agreement") from a timeshare provider (the "Supplier") on 8 August 2017 (the "Time of Sale"), for £19,069, with a balance of £15,074 to pay after trading in an existing timeshare. This was financed by a loan of £18,951 from the Lender (the "Credit Agreement"), which included the consolidation of some existing debt.

- The timeshare was a type of asset-backed timeshare which entitled Mr V to more than holiday rights. It also entitled him to a share in the proceeds of a property named on his purchase agreement (the "Allocated Property") after his contract came to an end.

- Mr V later complained, via a professional representative ("PR"), to the Lender about a number of concerns which included misrepresentations by the Supplier giving Mr V a claim against the Lender under Section 75 of the CCA, and matters giving rise to an unfair credit relationship between Mr V and the Lender.

- The Lender rejected the complaint and it was then referred to the Financial Ombudsman Service for an independent assessment.

In my provisional decision I said I didn't think the complaint should be upheld. Again, my full findings can be found in the appended provisional decision, but in very brief summary:

- The Lender had not been unfair or unreasonable in declining Mr V's Section 75 claim for misrepresentation because:

    - Some of the alleged misrepresentations were in fact true statements or statements of opinion which there was no evidence to demonstrate were not honestly held.

    - The remaining alleged misrepresentations were too vague and lacking in colour and context to be able to draw a positive conclusion that the Supplier had made false statements of specific fact to Mr V.

- The Lender had not participated in a credit relationship with Mr V that was unfair to him because:
    - Regardless of whether the Lender had carried out appropriate checks before lending to Mr V, there was a lack of evidence the loan had been unaffordable for him at the time. I had requested further evidence in relation to this, but was informed Mr V was unable to provide it.
    - The Credit Agreement had not been arranged by an unauthorised credit broker. Whether or not the broker's representatives had been self-employed was not relevant.
    - While there were terms within the Purchase Agreement that could potentially be operated in an unfair way, there was no evidence they had been operated in an unfair way with respect to Mr V, or would be in the future.
    - It was possible the Supplier had breached Regulation 14(3) of the Timeshare Regulations by marketing the timeshare to Mr V as an investment, but I was not persuaded by Mr V's testimony as to this issue. I had concerns over how late in the process Mr V had been asked to record his memories, after many years and various events that could have influenced his recollections. I didn't think I could attach much weight to his recollections as a result.
    - The Lender had paid the Supplier a commission equal to 4% of the loan amount for arranging the Credit Agreement. I did not think that the amount of commission or any other aspect of the commission arrangements between the Lender and Supplier led to such an extreme inequality of knowledge as to render Mr V's credit relationship unfair to him, though I acknowledged there *could* have been failings regarding the disclosure of the arrangements.
- I recognised that there might be alternative grounds for Mr V to bring a complaint in relation to the payment of commission by the Lender to the Supplier (other than it being something which might have rendered the credit relationship unfair), so I considered these also. But I thought these failed for similar reasons. I was unconvinced that fuller disclosure (if there had been failings in this area) would have led to Mr V not taking out the Credit Agreement, and I did not consider the Supplier had a fiduciary duty to Mr V. It had not been his agent in the transaction.

I invited the parties to the complaint to respond to my provisional decision. The Lender didn't respond to the provisional decision. PR didn't agree with the provisional decision, and asked me to consider various additional points, mostly relating to the alleged sale of the timeshare as an investment, but also repeating points it had made previously about the matter of the commission paid by the Lender to the Supplier, and alleged discrepancies in the purchase paperwork. The case has now been returned to me to decide.

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 3.7.3R
- CONC 4.5.3R
- CONC 4.5.2G

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

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

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

PR's comments in response to the provisional decision relate only to the issue of whether the credit relationship between Mr V and the Lender was unfair. In particular, PR has provided further comments in relation to whether the membership was sold to Mr V as an investment at the Time of Sale, and alleged discrepancies in the sales paperwork. It has also now repeated its argument that the payment of a commission by the Lender to the Supplier led to an unfair credit relationship.

As outlined in my provisional decision, PR originally raised various other points of complaint, all of which I addressed at that time. But it didn't make any further comments in relation to those in its response to my provisional decision. Indeed, it hasn't said it disagrees with any of my provisional conclusions in relation to those other points. And since I haven't been provided with anything more in relation to those other points by either party, I see no reason to change my conclusions in relation to them as set out in my provisional decision. So, I'll focus here on PR's points raised in response.

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

PR says it hadn't shared the Investigator's assessment on this complaint with Mr V, saying this was done in order not to influence his recollections. PR said Mr V was also unaware about the judgment handed down in *Shawbrook and BPF v FOS*[1]. PR said this means his recollections have not been influenced by either the Investigator's assessment or the judgment.

PR also argued that studies had shown high pressure sales would tend to lead to someone having vivid recollections of what happened during that process, for a variety of reasons. That may or may not be the case, but I don't think it assists PR in addressing the concerns I expressed in my provisional decision.

Part of my assessment of Mr V's testimony was to consider *when* it was written, and whether it may have been affected by external factors such as the widespread publication of the outcome of *Shawbrook and BPF v FOS*.

I have thought about what PR has said, but on balance, I don't find it a credible explanation of the contents of Mr V's evidence. Here, PR responded to our Investigator's assessment to say that Mr V alleged that Fractional Club membership had been sold to him as an investment and it provided evidence from Mr V to that effect. I fail to understand how Mr V disagreed with the assessment on the basis that the timeshare was sold as an investment if he didn't know our Investigator's conclusions. It follows, in my view, that Mr V did know about our Investigator's assessment before his evidence was provided.

So, I maintain that there is a risk that Mr V's testimony, vivid or not, was coloured by later events such as our Investigator's assessment and/or the outcome in *Shawbrook & BPF v FOS*. And, on balance, the way in which the evidence has been provided makes me conclude that I have to treat it with considerable caution and can place little weight on it.

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 V's purchasing decision.

The discrepancies between dates on the Purchase Agreement and Mr V's timeshare certificate

I will also address PR's point regarding the apparent ambiguity in the proposed sale date of the Allocated Property. PR suggests that a delayed sale date could lead to an unfairness to Mr V in the future, as any delay could mean a delay in the realisation of his share in the Allocated Property.

It does appear that the proposed date for the commencement of the sales process, as set out on the owners' certificate, is 31 December 2035. This date indicates that the membership has a term of 18 years. The same date appears on the "Member's Declaration" signed by Mr W. The ambiguity identified by PR is that in the Information Statement provided as part of the purchase documentation it says the following:

> "*The Owning Company will retain such Allocated Property until the automatic sale date in **19 years time** or such later date as is specified in the Rules or the Fractional Rights Certificate.*" (bold my emphasis).

[1] *R (on the application of Shawbrook Bank Ltd) v Financial Ombudsman Service Ltd and R (on the application of Clydesdale Financial Services Ltd (t/a Barclays Partner Finance)) v Financial Ombudsman Service* [2023] EWHC 1069 (Admin) ('*Shawbrook & BPF v FOS*').

While the wording of the Information Statement appears generic and is unfortunate in that it seems to suggest the sale date would be in 19 years or *later*, it seems clear to me that the commencement date for the start of the sales process in respect of the Allocated Property is 31 December 2035, as set out on the owners' certificate.

So, I can't see that this is a reason to find the credit relationship unfair and uphold this complaint.

The payment of a commission by the Lender to the Supplier

I've considered PR's points in relation to the matter of commission, but these do not say anything in addition to what it has already said or which has already been addressed in my appended provisional decision. Based on the wording of PR's submissions relating to this issue, I do not think it appreciated that I had covered it in my provisional decision. I say this because PR observed "We…don't know the amount of the commission paid." In my provisional decision I set out the relevant figures. It appears PR has overlooked this.

In any event, as PR has said nothing new or that would change my decision, my views on the matter of commission remain as set out in the appended provisional decision.

My final decision

For the reasons explained above, and the appended provisional decision, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr V to accept or reject my decision before 12 February 2026.

Will Culley
Ombudsman

COPY OF PROVISIONAL DECISION

I've considered the relevant information about this complaint.

Having done so, I've arrived at the same ultimate conclusions as our Investigator, but I've gone into more detail, and my reasons are different in places. As a result, I'm issuing this provisional decision to give the parties to the complaint an opportunity to provide further submissions.

The deadline for both parties to provide any further comments or evidence for me to consider is **9 December 2025**. Unless the information changes my mind, my final decision is likely to be along the following lines.

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

The complaint

Mr V complains Mitsubishi HC Capital UK PLC (the "Lender") has failed to honour a claim under Section 75 of the Consumer Credit Act 1974 (the "CCA") and has participated in an unfair credit relationship with him under Section 140A of the CCA.

Mr V is represented in his complaint by a professional representative ("PR").

What happened

This complaint relates to a timeshare purchase made by Mr V from a timeshare provider (the "Supplier") on 8 August 2017. He later made another purchase from the Supplier, which is the subject of a separate complaint. I've outlined the basic details below:

- The purchase made on 8 August 2017 (the "Time of Sale") was of a membership in the Supplier's "Fractional Club". Mr V bought 1,130 points in the Fractional Club, which could be used to book holiday accommodation annually (the "Purchase Agreement"). Fractional Club membership was also asset-backed, meaning it included a share in the future sale proceeds of an apartment named on the contract to purchase the membership (the "Allocated Property"). The purchase cost £19,069, but Mr V traded in an existing product with the Supplier for £3,995, leaving a balance of £15,074 to pay.

- The Supplier arranged a loan (the "Credit Agreement") with the Lender for £18,951, which was a combination of the balance of the purchase price and the consolidation of existing debt from a previous purchase. This was repayable over 180 months at £218.89 per month.

- In June 2022, through PR, Mr V complained to the Lender, seeking to find it responsible for the Supplier having mis-sold the timeshare and associated loan. The individual mis-selling concerns raised by PR can be found in the table below, but broadly-speaking they included misrepresentations for which Mr V sought to hold the Lender liable under Section 75 of the CCA, and matters which were alleged to have rendered the credit relationship between him and the Lender unfair under Section 140A of the CCA.

The Lender rejected the complaint, which was then referred 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 V disagreed with the Investigator's assessment and asked for an Ombudsman's decision – which is why it was passed to me. PR supplied a witness statement from Mr V at this point to support his case, and also introduced a new argument – that the commission arrangements between the Lender and the Supplier were an additional cause of unfairness in the credit relationship between Mr V and the Lender.

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 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 here. But I would add that the following regulatory rules/guidance are also relevant:

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

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

- CONC 3.7.3R
- CONC 4.5.3R
- CONC 4.5.2G

<u>The FCA's Principles</u>

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 provisionally decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. And having done that, I do not 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.

I think it's also important at this stage to outline very briefly the general grounds on which Mr V seeks redress from the Lender in relation to what are, at least in part, the *Supplier's*

alleged wrongdoings as opposed to the Lender's. The grounds are that Mr V has a claim under Section 75 of the CCA, and Section 140A of the CCA.

Section 75 of the CCA gives a person who has purchased goods or services with certain kinds of credit, a right to claim against their lender in respect of any breach of contract or misrepresentation on the part of the supplier of those goods or services. This is subject to certain technical conditions being met, which I am satisfied have been met in this case.

Section 140A of the CCA operates in a more complex manner. Insofar as is relevant to Mr V's case, it means that the credit relationship between him and the Lender can be found unfair because of anything done (or not done) by, or on behalf of, the Lender.

An unfair credit relationship can also be based on the terms of a related agreement (such as the agreement to buy the timeshare) and, when combined with Section 56 of the CCA, on anything done or not done by the Supplier on the Lender's behalf before the making of the timeshare or loan agreements. The Supplier's acts or omissions during the process of negotiations leading up to the purchase are deemed to be the Lender's responsibility.

In the interests of efficiency and ease of reading, I have set out my findings in a table format. Where a particular finding requires further explanation or analysis, I have indicated this and provided the further explanation below the table.

Section 75 - Misrepresentations	**Reason why this complaint doesn't succeed**
It was falsely represented that the product was an investment that would "considerably appreciate in value".	There's insufficient persuasive evidence this was said. If it was said, it would not be untrue to describe the product as an investment as it contained investment features. Any statements regarding future value are likely to have been statements of honest opinion in the absence of evidence to show otherwise.
It was falsely represented that there would be a considerable return on investment because the purchase involved a share in a property that would increase in value.	As per the point above, there is insufficient persuasive evidence these representations were made. If they were, there's insufficient evidence they were anything other than statements of honest opinion.
It was falsely represented that the Fractional Club membership could be sold back to the Supplier or easily to third parties at a profit.	There's very little colour or context to this allegation, meaning it's difficult to conclude the Supplier represented this to be the case. Mr V also signed to say he understood the Supplier would not buy back the membership.
It was falsely represented that Mr V would have access to "the holiday apartment" at any time all year round.	This is a vague allegation which also lacks sufficient detail, context or colour to demonstrate the Supplier made such statements.
Matters allegedly rendering the credit relationship unfair	**Reason why this complaint doesn't succeed**

Mr V was pressured into making the purchase.	There is little evidence of what specifically the Supplier said or did which meant Mr V felt he had no choice but to purchase. Mr V also did not use the cooling-off period to cancel the purchase, which I would have expected had he only purchased because he was pressured into doing so.
The Lender failed to carry out the creditworthiness/affordability checks required by industry guidance or regulations.	Mr V has not provided evidence that the loan was actually unaffordable, which would need to be shown if the complaint were to succeed on this point. Further evidence was requested to support this ground of complaint, but I'm informed Mr V is unable to provide it.
The Credit Agreement was arranged by self-employed individuals who did not hold the relevant permissions to broker loans, meaning the agreement is unenforceable.	It appears the entity which arranged the Credit Agreement held the relevant permissions from the Financial Conduct Authority at the relevant time, so the agreement was not arranged by an unauthorised credit broker. The employment status of the individuals involved is not relevant.
The Purchase Agreement contained terms which were unfair to Mr V, including terms allowing the Supplier to repossess the timeshare for minor breaches.	While there are terms within the Purchase Agreement which could be operated in an unfair way, no evidence has been provided that the terms have been operated in this way in practice, or likely will be in future, in Mr V's case.
The Supplier marketed and sold the membership as an investment in breach of Regulation 14(3) of the Timeshare Regulations.	While it's possible the Supplier marketed the product in this way, it would need to have played a material part in Mr V's decision to buy the Fractional Club membership, to render the credit relationship between him and the Lender unfair. **See further details below.**
The arrangements for the payment of commission by the Lender to the Supplier were not properly disclosed in line with regulatory requirements and the Supplier's "disinterested duty" to Mr V.	I've seen nothing in the Lender and Supplier's commercial arrangements, the amounts of commission paid, or the duties of the Supplier to Mr V, to suggest these commission arrangements rendered the credit relationship with the Lender unfair to him. **See further details below.**

I'll now set out the expanded reasons for my decision relating to the allegations that the Supplier sold or marketed the Fractional Club membership in a way which breached the prohibition in the Timeshare Regulations on selling timeshares as investments, and relating to the matter of commission.

<u>The Supplier's alleged sale or marketing of the Fractional Club membership as an investment</u>

Given what is known about the way in which the Supplier sold Fractional Club memberships, I think it's *possible* the sales representatives could have said or suggested to Mr V that Fractional Club membership was an investment which could lead to a financial gain or profit, and therefore have acted in contravention of the relevant prohibition in the Timeshare Regulations.

However, it's necessary to show that any such breach by the Supplier had a material impact on Mr V's decision to go ahead with his purchase, to be able to arrive at a conclusion that the credit relationship between him and the Lender was rendered unfair to him as a result. In this case, the evidence is not persuasive, for reasons I'll explain.

Up until relatively recently, the Financial Ombudsman Service had received no evidence from Mr V, in his own words, in relation to any aspect of his complaint. All we had to consider was the letter of complaint from PR, which was identical in nearly all respects to other letters of complaint I have seen from PR on behalf of other complainants. In other words, it was generic in nature.

It was only after the Investigator issued an unfavourable assessment of the merits of the complaint, and after 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) ('*Shawbrook & BPF v FOS*') was handed down, that we received a witness statement from Mr V. This statement has been signed, but it is not dated, nor was it supplied with any audit trail to establish how and when it came to be written.

In the statement, Mr V recalled that the Supplier led him to believe that Fractional Club memberships were constantly increasing in value, so he would *"at least get [his] money back"* when the membership was sold. But 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 light of this, I find it difficult to understand why the Financial Ombudsman Service was only given this evidence when it was.

Indeed, as there isn't any other evidence on file to corroborate Mr V's very recent evidence about what happened at the Time of Sale, there seems to me to be a real risk that his recollections were coloured by the judgment in *Shawbrook & BPF v FOS*. And with that being the case, I'm not persuaded that I can give his written recollections the weight necessary to find that the credit relationship in question was unfair for reasons relating to a breach of the relevant prohibition.

On balance, therefore, even if the Supplier had marketed or sold the Fractional Club membership as an investment in breach of Regulation 14(3) of the Timeshare Regulations, I am not persuaded that Mr V'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). And for that reason, I do not think the credit relationship between Mr V and the Lender was unfair to him even if the Supplier had breached Regulation 14(3).

<u>The commission arrangements between the Lender and the Supplier</u>

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

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

The Supreme Court ruled that, in each of the three cases, the commission payments made to car dealers by lenders were legal, as claims for the tort of bribery, or the dishonest assistance of a breach of fiduciary duty, had to be predicated on the car dealer owing a

fiduciary duty to the consumer, which the car dealers did not owe. A "disinterested duty", as described in *Wood v Commercial First Business Ltd & ors and Business Mortgage Finance 4 plc v Pengelly* [2021] EWCA Civ 471, is not enough.

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

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

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

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

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

But I don't think *Hopcraft, Johnson and Wrench* assists Mr V 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 V 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 V 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 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 V.

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 V entered into wasn't high. At £758.04, 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 he known at the Time of Sale that the Supplier was going to be paid a flat rate of commission at that level, I'm not currently persuaded that he either wouldn't have understood that or would have otherwise questioned the size of the payment at that time. And at such a low level, the impact of commission on the cost of the credit he needed in order to buy the timeshare 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 V but as the supplier of contractual rights he obtained under the Purchase Agreement, the transaction doesn't strike me as one with features that suggest the Supplier had an obligation of "loyalty" to him when arranging the Credit Agreement and thus a fiduciary duty.

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

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

The first ground relates to whether the Lender is liable for the dishonest assistance of a breach of fiduciary duty by the Supplier because it took a payment of commission from the Lender without telling Mr V (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 V 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.

My provisional decision

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

Will Culley
Ombudsman