DRN-6086456

The complaint

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

What happened

Mr W[1] was a member of a timeshare provider (the 'Supplier') – having purchased several products from it over time. But the product at the centre of this complaint is his membership of a timeshare that I'll call the 'Fractional Club' – which he bought on 21 November 2012 (the 'Time of Sale'). He entered into an agreement with the Supplier to buy 2,440 fractional points at a cost of £6,998 (the 'Purchase Agreement') after trading in their existing timeshare.

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

Mr W paid for his Fractional Club membership by taking finance of £32,409 from the Lender (the 'Credit Agreement'). The additional amount was used to consolidate two previous loans used for timeshare purchases – one through the Lender and one with a different credit provider.

Mr W – using a professional representative (the 'PR') – wrote to the Lender on 5 September 2018 (the 'Letter of Complaint') to raise several 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 dealt with Mr W's concerns as a complaint and issued its final response letter on 20 September 2018, rejecting it on every ground.

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

I issued my provisional decision on 22 December 2025. And, in summary, I made the following provisional findings (which form part of this final decision):

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

[1] The timeshare was purchased by Mr and Mrs W, but the loan was only in Mr W's name. So, only he can bring a complaint about the Credit Agreement. I only refer to Mr W in this decision – but this can be taken to mean Mr and Mrs W when appropriate, such as when I refer to their timeshare membership.

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

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

It was said in the Letter of Complaint that Fractional Club membership had been misrepresented by the Supplier at the Time of Sale because Mr W were told or led to believe by the Supplier that Fractional Club membership:

(1) Had a guaranteed end date when that was not true.

(2) Was the only way of releasing himself from his existing membership when that was not true.[2]

(3) Was exclusive to him (and other members) when that was not true.

As I understand it, the sale of the Allocated Property could be postponed in certain circumstances according to the Fractional Club Rules. But Mr W says little to nothing to persuade me that he was given a guarantee by the Supplier that the Allocated Property would be sold on a specific date when such a promise would have been impossible to stand by given the inevitable uncertainty of selling property some way into the future.

And as there isn't enough evidence on file to support the PR's allegation that Fractional Club membership had been misrepresented for reasons relating to points (2) and (3), I'm not persuaded that there were representations by the Supplier on the issues in question that constituted false statements of existing fact.

So, while I recognise that Mr W 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 75 of the CCA: the Supplier's Breach of Contract

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

[2] This allegation is implausible given that at the Time of Sale Mr W's existing timeshare was a similar Fractional Club membership but included only 1,494 fractional points and was linked to a different allocated property.

In the Letter of Complaint, the PR says that unfair terms in the contract constituted a breach of contract. But I think its allegation is more relevant to whether those allegedly unfair contract terms created an unfair credit relationship, which I deal with below. I cannot see that the allegedly unfair terms created a breach of contract relevant to Section 75 of the CCA.

So, from the evidence I have seen, I do not think the Lender is liable to pay Mr W any compensation for a breach of contract by the Supplier. And with that being the case, I do not think the Lender acted unfairly or unreasonably in relation to this aspect of the complaint either.

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

I've already explained why I'm not persuaded that 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.

The PR says, for instance, that:

1. The right checks weren't carried out before the Lender lent to Mr W.

2. Mr W was not given a choice of lender.

3. Mr W was pressured by the Supplier into purchasing Fractional Club membership at the Time of Sale.

4. There was one or more unfair contract terms in the Purchase Agreement.[3]

5. Fractional Club membership was marketed and sold as investment in breach of a prohibition on doing so.

6. The Lender paid commission to the Supplier for arranging the credit agreement but did not disclose this to Mr W.

However, having considered the entirety of the credit relationship between Mr W and the Lender along with all of the circumstances of the complaint, I don't think the credit relationship between them was likely to have been rendered unfair for the purposes of Section 140A. When coming to that conclusion, and in carrying out my analysis, I have looked at:

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

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

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

[3] I deal with points 4 and 6 below in the section entitled *"The provision of information by the Supplier at the Time of Sale"*.

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

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

6. Where relevant, any existing unfairness from a related credit agreement.[4]

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

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

While the PR says that the right affordability checks weren't carried out at the Time of Sale, even if I were to find that the Lender failed to do everything it should have when it agreed to lend (and I make no such finding), I would have to be satisfied that the money lent to Mr W was actually unaffordable before also concluding that he lost out as a result and then consider whether the credit relationship with the Lender was unfair to him for this reason. But from the information provided, I am not satisfied that the lending was unaffordable for the Mr W.

The PR has not explained how, if it were true, Mr W not being offered a different lender to pay for Fractional Club membership caused him any unfairness or financial loss. Mr W was aware of the interest rate as set out on the face of the Credit Agreement, as well as the term of the loan and the monthly repayments, so he understood what it was he was taking out. Further, I don't think the rate of interest was excessive, compared either to other rates available from other point-of-sale lenders or on the open market, so I can't say it would be fair or reasonable to tell the Lender to do anything because of this.

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

Overall, therefore, I don't think that Mr W credit relationship with the Lender was rendered unfair to him under Section 140A for any of the reasons above. But there is another reason, perhaps the main reason, why the PR says the credit relationship with the Lender was unfair to them. And that's the suggestion that Fractional Club membership was marketed and sold to him as an investment in breach of prohibition against selling timeshares in that way.

[4] The loan used to pay for Mr W's Vacation Club membership in September 2011 was a related credit agreement for the purposes of Section 140C of the CCA, since it was consolidated into the Credit Agreement and was between the Lender and Mr W.

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

The Lender does not dispute, and I am satisfied, that Mr W'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.

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 Mr W the prospect of a financial return – whether or not, like all investments, that was more than what he first put into it. But it is important to note at this stage that the fact that Fractional Club membership included an investment element did not, itself, transgress the prohibition in Regulation 14(3). That provision prohibits the *marketing and selling* of a timeshare contract as an investment. It doesn't prohibit the mere existence of an investment element in a timeshare contract or prohibit the marketing and selling of such a timeshare contract *per se*.

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

To conclude, therefore, that Fractional Club membership was marketed or sold to Mr W as an investment in breach of Regulation 14(3), I have to be persuaded that it was more likely than not that the Supplier marketed and/or sold membership to him as an investment, i.e. told him or led him to believe that Fractional Club membership offered him the prospect of a financial gain (i.e., a profit) given the facts and circumstances of *this* complaint.

There is competing evidence in this complaint as to whether Fractional Club membership was marketed and/or sold by the Supplier at the Time of Sale as an investment in breach of regulation 14(3) of the Timeshare Regulations.

On the one hand, the Supplier made efforts to avoid specifically describing membership of the Fractional Club as an 'investment' or quantifying to prospective purchasers, such as Mr W, the financial value of his share in the net sales proceeds of the Allocated Property along with the investment considerations, risks and rewards attached to them.

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 Mr W as an investment in breach of Regulation 14(3).

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

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

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

But on my reading of the evidence before me, the prospect of a financial gain from Fractional Club membership was not an important and motivating factor when Mr W decided to go ahead with his purchase.

At the request of our Investigator the PR provided a statement from Mr W on 7 December 2023. This was signed and dated 30 October 2017, over a month after the date on the Letter of Complaint. This provides some information about how Mr W first encountered the Supplier and comments generally on sales presentations Mr W attended. And while it says that *"fractional was all about investment"*, it does not provide any information that is specific to any particular sale (such as the Time of Sale). Given that Mr W's purchase at the Time of was Mr W's second of five Fractional Club purchases, it is impossible for me to ascertain from the statement what the Supplier said at the Time of Sale. Even if I was able to do so, Mr W does not state why he chose to enter any of his six full timeshare purchases with the Supplier, much less the Purchase Agreement in question.

I am also mindful that the Letter of Complaint did not allege that the Supplier sold or marketed Fractional Club membership as an investment, nor that this was material to Mr W's decision to purchase – as you might expect it to if this was important to Mr W at the Time of Sale.

It is possible that Mr W was 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 Mr W himself doesn't persuade me that his purchase was motivated by his 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 he ultimately made.

I note that at the Time of Sale Mr W increased his fractional points by 16%. So, he did increase his holiday purchasing power. And he went on to make three further Fractional Club purchases, increasing his fractional points on each occasion until he held a total of 3,020 fractional points in June 2014. Given this pattern of purchases, it seems likely that Mr W made some if not all those purchases because he wanted to take more holidays or to take holidays in larger or more luxurious accommodation and/or resorts.

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 W'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 have no reason to think he would not have pressed ahead with his purchase regardless of whether there had been a breach of Regulation 14(3). And for that reason, I do not think the credit relationship between Mr W and the Lender was unfair to him even if the Supplier had breached Regulation 14(3).

Linked credit agreement

As mentioned above, I must consider if there was any unfairness because of the linked credit agreement – being that used in September 2011 to purchase Vacation Club membership. This was Mr W's first full timeshare purchase with the Supplier following a Trial membership purchased in March 2011. Having done so, I have no reason to think that credit agreement created any unfairness that carried over into the credit relationship I am considering.

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

The PR says that Mr W were not given sufficient information at the Time of Sale by the Supplier about the ongoing costs of Fractional Club membership. The PR also says that, because some of the terms of the Purchase Agreement weren't individually negotiated, they were unfair contract terms as were the terms governing the ongoing costs of membership and consequences of non-payment.

As I've already indicated, the case law on Section 140A makes it clear that it does not automatically follow that regulatory breaches create unfairness for the purposes of the unfair relationship provisions. The extent to which such mistakes render a credit relationship unfair must also be determined according to their impact on the complainant.

I acknowledge that it is also possible that the Supplier did not give Mr W sufficient information, in good time, on the various charges he could have been subject to as Fractional Club members to satisfy the requirements of Regulation 12 of the 2010 Timeshare Regulations (which was concerned with the provision of 'key information'). But even if that was the case, I cannot see that the ongoing costs of membership were applied unfairly in practice. And as neither Mr W nor the PR have persuaded me that he would not have pressed ahead with his purchase had the finer details of the Fractional Club's ongoing costs been disclosed by the Supplier in compliance with Regulation 12, I cannot see why any failings in that regard are likely to be material to the outcome of this complaint given its fact and circumstances.

As for the PR's argument that there were one or more unfair contract terms in the Purchase Agreement, I can't see that any such terms were operated unfairly against Mr W in practice, nor that any such terms led him to behave in a certain way to his

detriment. And with that being the case, 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 even if they could be said to be unfair contract terms, which I make no formal finding on.

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

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

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

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

1. The size of the commission (as a percentage of the total charge for credit). In Mr Johnson's case it was 55%. This was *"so high"* and *"a powerful indication that the relationship…was unfair"* (see paragraph 327).

2. The failure to disclose the commission.

3. The concealment of the commercial tie between the car dealer and the lender.

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

1. The size of the commission as a proportion of the charge for credit.

2. The way in which commission is calculated (a discretionary commission arrangement, for example, may lead to higher interest rates).

3. The characteristics of the consumer.

4. The extent of any disclosure and the manner of that disclosure (which, insofar as
   Section 56 of the CCA is engaged, includes any disclosure by a supplier when acting as a broker).

5. Compliance with the regulatory rules.

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

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

As the Supreme Court said in paragraph 326 of its judgment in *Hopcraft, Johnson and Wrench,* it's not possible to simply apply the reasoning of the Supreme Court in *Plevin v Paragon Personal Finance Ltd* [2014] UKSC 61 ('*Plevin*') to this complaint (as the PR does) when it's concerned with a product and marketplace that were very different to those in *Plevin*. What's more, Mr W was provided with information as to the price of
Fractional Club membership and the cost of the Credit Agreement (interest rate, fees, APR and monthly repayments). So, he was at least in a position from which he could understand the cost of the Credit Agreement and compare it with other options that might have been available at the Time of Sale.

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

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

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

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 W entered wasn't high. At £3,321.92, it was only 10% of the amount borrowed and even less than that (6%) as a proportion of the charge for credit. So, had he known at the Time of Sale that the Supplier was going to be paid a flat rate of commission at that level, I'm not currently persuaded that he either wouldn't have understood that or would have otherwise questioned the size of the payment at that time. After all, Mr W wanted Fractional Club membership and had no obvious means of his own to pay for it. And at such a low level, the impact of commission on the cost of the credit he needed for a timeshare he wanted doesn't strike me as disproportionate. So, I think he would still have taken out the loan to fund his purchase at the Time of Sale had the amount of commission been disclosed.

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

Overall, therefore, I'm not 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 W.

Section 140A: Conclusion

Given all 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 W 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 W 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 W 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 W (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 W 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.

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 Mr W Section 75 claims. I am not persuaded that the Lender was party to a credit relationship with him under the Credit Agreement and related Purchase Agreement that was unfair to him for the purposes of Section 140A of the CCA. And having taken everything into account, I see no other reason why it would be fair or reasonable to direct the Lender to compensate him.

So, in summary, I wasn't persuaded by any of the arguments put forward for why the credit relationship between Mr W and the Lender was unfair to him under Section 140A of the CCA. And I couldn't see any other reason why it would be fair or reasonable to direct the Lender to compensate Mr W – all of which led me to provisionally conclude that there was no basis on which to uphold the complaint.

The Lender didn't respond to my provisional decision. The PR disagreed with my overall conclusion. When doing that, it provided significant submissions at first but it went on to withdraw them and replace them with more concise submissions – which were primarily concerned with the suggestion that Mr W Fractional Club membership had been marketed and sold as an investment in contravention of a prohibition on selling timeshares in that way.

The PR also repeated its concerns about the pressure Mr W was put under by the Supplier at the Time of Sale and payment of commission to the Supplier by the Lender – albeit with a focus on the Supreme Court's judgment in *Hopcraft v Close Brothers Limited; Johnson v FirstRand Bank Limited; Wrench v FirstRand Bank Limited* [2025] UKSC 33 ('*Johnson'*).

As a result, the complaint was passed back to me for further thought and my Final Decision.

The Legal and Regulatory Context

The legal and regulatory context that I think is relevant to this complaint has been shared in several hundred published decisions on very similar complaints, as well as in previous correspondence with the parties. So, there's no need for me to set this out again in detail here. I simply remind the parties that our rules[5] say that in considering what is fair and reasonable in all the circumstances of the complaint, I will take into account: relevant (i) law and regulations; (ii) regulators' rules, guidance and standards; and (iii) codes of practice; and (when appropriate), what I consider to have been good industry practice at the relevant time.

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.

And having done that afresh, I'm not persuaded to depart from my provisional decision for reasons I'll now explain.

Before I do, I want to make it clear that I recognise that this complaint, when originally made, was wide ranging and made on a number of different grounds - including:

(1) Misrepresentations by the Supplier at the Time of Sale giving Mr W a claim against the Lender under Section 75 of the CCA, which the Lender failed to accept and pay.

[5] Specifically Rule 3.6.4 in the Dispute Resolution Rules found in the Financial Conduct Authority's Handbook for Rules and Guidance.

(2) A breach of contract by the Supplier giving Mr W a claim against the Lender under Section 75 of the CCA, which the Lender failed to accept and pay.

(3) The Lender being party to an unfair credit relationship under the Credit Agreement and related Purchase Agreement for the purposes of Section 140A of the CCA.

However, as the PR's more concise response to my provisional decision relates, in the main, to (3), if I haven't been provided with new arguments and/or evidence to consider in relation to (1) or (2), I see no reason to change or add to my conclusions (as set out in the summary of my provisional decision above) in relation to them.

Indeed, as I said in my provisional decision, my role as an Ombudsman is to decide what's fair and reasonable in the circumstances of this complaint – rather than address every single point that's been made. And with that being the case, while I have read all of the PR's submissions in full, 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 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. And it is for those reasons that I don't think the credit relationship between Mr W and the Lender was rendered unfair to him on the basis that membership had been misrepresented.

However, there are, of course, other reasons why the PR argues that the credit relationship in question was unfair. But having reconsidered the entirety of that relationship along with everything that has now been said and/or provided by both sides, I still don't think the credit relationship between Mr W and the Lender was likely to have been rendered unfair to him for the purposes of Section 140A. When coming to that conclusion, I have looked again 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 inherent probabilities of the sale given its circumstances; and, when relevant

5. Any existing unfairness from a related credit agreement.

I have also reconsidered any commercial (including commission) arrangements between the Lender and the Supplier at the Time of Sale and the disclosure of those arrangements.

The PR continues to argue that Mr W was pressured by the Supplier into purchasing Fractional Club membership at the Time of Sale. The PR says Mr W was not notified of the 14-day cooling off period. But I can see that he signed a document at the Time of Sale that specifically explained that cooling off period and acknowledging that he had received that information. So, I do not accept that he was not notified of the cooling off period. And as neither the PR nor Mr W have submitted any other new evidence to further its argument about pressure, it is for the same reasons I gave in my provisional decision that I don't think either of them render his credit relationship with the Lender unfair to him for the purposes of

Section 140A. To be clear, in reaching my provisional and final decisions I have considered Mr W's statement dated 30 October 2017.

I'll turn now to what continues to be the main reason for the PR's assertion that the credit relationship in question was unfair.

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

As I said in my provisional decision, there is competing evidence in this complaint as to whether the 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. I acknowledged that it was possible that Fractional Club membership was marketed and sold to Mr W as an investment in breach of Regulation 14(3). A view I still hold.

But I also thought and still think that it isn't necessary to make a formal finding on that particular issue for the purposes of my determination on this complaint because a breach of Regulation 14(3) by the Supplier is not itself determinative of the outcome in this complaint unless the impact of such a breach suggested otherwise.

The PR disagrees with that and cites the judgment of Mrs Justice Collins Rice in *Shawbrook & BPF v FOS* in support – saying that she found that the selling of a timeshare as an investment (i.e. in a breach of Regulation 14(3) of the Timeshare Regulations) was, itself, sufficient to create an unfair credit relationship.

However, on my reading of *Shawbrook & BPF v FOS*, Mrs Justice Collins Rice didn't find that a breach of Regulation14(3) of the Timeshare Regulations was *"causative of the legal relations entered into".* She recognised that such a breach was *"conduct that knocks away the central consumer protection safeguard"*, but she went on to say that it was the ombudsmen behind the two reviewed decisions who found that such a breach was, given the facts and circumstances of the relevant complaints, causative of the consumers in question purchasing their timeshares and taking out loans to do so.

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

I am also mindful of what HHJ Waksman QC (as he then was) and HHJ Worster had to say in *Carney v NM Rothschild & Sons Ltd* [2018] EWHC 958 ('*Carney*') and *Kerrigan v Elevate Credit International Ltd* [2020] EWHC 2169 (Comm) ('*Kerrigan*') (respectively) on causation.

In *Carney*, HHJ Waksman QC said the following in paragraph 51:

> *"[…] In cases of wrong advice and misrepresentation, it would be odd if any relief could be considered if they did not have at least some material impact on the debtor when deciding whether or not to enter the agreement. […] in a case like the one before me, if in fact the debtors would have entered into the agreement in any event, this must surely count against a finding of unfair relationship under s140A. […]"*

And in *Kerrigan*, HHJ Worster said this in paragraphs 213 and 214:

> *"[…] The terms of section 140A(1) CCA do not impose a requirement of "causation" in the sense that the debtor must show that a breach caused a loss for an award of substantial damages to be made. The focus is on the unfairness of the relationship, and the court's approach to the granting of relief is informed by that, rather than by a*

*demonstration that a particular act caused a particular loss. Section 140A(1) provides only that the court **may** make an order **if** it determines that the relationship is unfair to the debtor. […]*

[…] There is a link between (i) the failings of the creditor which lead to the unfairness in the relationship, (ii) the unfairness itself, and (iii) the relief. It is not to be analysed in the sort of linear terms which arise when considering causation proper. The court is to have regard to all the relevant circumstances when determining whether the relationship is unfair, and the same sort of approach applies when considering what relief is required to remedy that unfairness. […]"

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

Indeed, doing that accords with common sense, for if events would have unfolded in the same way whether or not such a pre-contractual breach had occurred, it would be difficult to attribute any particular importance to the breach when deciding whether an unfair debtor-creditor relationship ensued, or whether a remedy is appropriate.

If there had been a breach of Regulation 14(3), would it have rendered the credit relationship between Mr W and the Lender unfair to him?

Having found that it was possible that the Supplier breached Regulation 14(3) of the Timeshare Regulations at the Time of Sale, I have considered (as I did in my provisional decision) what impact that breach (if there was one) had on the fairness of the credit relationship between Mr W and the Lender under the Credit Agreement and related Purchase Agreement.

And on my re-reading of the evidence before me, I'm still not persuaded that the prospect of a financial gain from Fractional Club membership was an important and motivating factor when Mr W decided to go ahead with their purchase, such that he would have made an entirely different purchasing decision had there not been a breach of Regulation 14(3). And I say that for the following reasons.

The PR's response to my provisional decision suggests that I did not take into account Mr W's statement or that I gave it little weight when reaching that decision. But that is not the case. While I noted the timing of the statement's submission to us, I also acknowledged and did not question that it was dated 30 October 2017. And I analysed what the statement said when reaching my provisional decision, concluding that it did not persuade me that Mr W entered the purchase agreement because he hoped or expected to make a profit from it. And I have no reason to change or add to what I said in my provisional decision.

The PR also says that the overall cost of Fractional Club membership means that Mr W must have purchased because he was told he would make a profit. But I am not persuaded that is an inevitable or fair and reasonable conclusion to reach. Mr W purchased 1,740 fractional points to use on holidays each year of his membership. That was likely to be sufficient for more than one week's holiday per year and was an increase on the number of points he previously held under his previous Fractional Club membership. It is possible that he viewed the purchase as worthwhile simply for those additional points. And his statement does not say why he entered this specific purchase.

The PR has expressed some scepticism that the Allocated Property or Mr W's rights in it actually exist. But MR W's rights are set out in the Purchase Agreement and associated

documents, including the Fractional Rights Certificate. I have no reason to doubt that the Allocated Property exists and will be sold and the proceeds distributed to the Fractional Owners by the Trustee as set out in the relevant documentation. And I do not think further investigation into this is necessary to reach a fair and reasonable decision on this complaint.

On balance, therefore, for the reasons I've set out above, I don't think the credit relationship between Mr W and the Lender was unfair to him even if the Supplier had breached Regulation 14(3).

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

As I've already said, I set out my thoughts in relation to the implications of the Supreme Court's judgment in *Hopcraft, Johnson and Wrench* for this complaint in my provisional decision. I remain satisfied that the Lender has provided me with sufficient information to reach a conclusion about its commercial (including commission) arrangements with the Supplier. I've seen nothing in this case that leads me to think that the information in question is inaccurate. And while I recognise that the PR might disagree with the thoughts I shared in my provisional decision, it hasn't offered any evidence and/or arguments that lead me to think that (1) the factors referenced by the Supreme Court have a bearing on the outcome of this complaint given its circumstances or (2) there are any other reasons why the commercial (including commission) arrangements between the Supplier and the Lender rendered the credit relationship between the latter and Mr W under the Credit Agreement and related Purchase Agreement unfair for the purposes of Section 140A.

Conclusion

Having adopted my provisional findings, and reconsidered the facts and circumstances of this complaint, I still I don't think the Lender acted unfairly or unreasonably when it dealt with Mr W's section 75 claim(s). I'm still not persuaded that the Lender was party to a credit relationship with Mr W that was unfair to him for the purposes of section 140A of the CCA. And having taken everything into account, I see no other reason why it would be fair or reasonable for me to direct the Lender to compensate Mr W.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 8 May 2026.

Phillip Lai-Fang
Ombudsman