

The complaint

Mr H's complaint is, in essence, that Shawbrook Bank Limited (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 a claim under Section 75 of the CCA.

Mr H's complaint was originally brought jointly with his wife, Mrs H. Mrs H has passed away since, but Mr H has continued the complaint on behalf of her estate, in his capacity as executor. When I refer to Mr H in this decision, this should be taken to include Mrs H and her estate, as appropriate.

What happened

I issued a provisional decision on Mr H's complaint on 8 December 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 H entered an agreement to buy a timeshare (the "Purchase Agreement") from a timeshare provider (the "Supplier") on 1 October 2014 (the "Time of Sale"), for £8,556. This was financed by a loan of the same amount from the Lender (the "Credit Agreement"). The purchase was an upgrade of an existing timeshare – Mr H went from having 1,540 points to spend on holiday accommodation annually, to having 2,080 points. Mr H had purchased the previous timeshare in May 2014.
- The timeshare was a type of asset-backed timeshare¹ which entitled Mr H 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 H later complained, via a professional representative ("PR"), to the Lender about a number of concerns which included misrepresentations and breaches of contract by the Supplier giving Mr H a claim against the Lender under Section 75 of the CCA, and matters giving rise to an unfair credit relationship between Mr H 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 to summarise:

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

¹ Sometimes known as a "fractional" timeshare, due to involving the purchase of an interest in a fraction of a property.

- Some of the alleged misrepresentations were in fact true statements or were omissions which had not impliedly represented something which was false.
 - I thought it was unlikely that it had been misrepresented to Mr H that the loan would be interest free. He had signed paperwork which made it clear the loan was not interest free.
 - I was unconvinced that Mr H would have gone ahead with the purchase, but for allegedly incorrect information given about the amount of a “travel savings bonus” he would receive for signing up. I thought the difference between the amount Mr H was allegedly told he’d receive, and the amount he’d actually receive, was too small to be material.
 - 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 H.
- The Lender had not been unfair or unreasonable in declining Mr H’s Section 75 claim for breach of contract because:
 - While I acknowledged that Mr H may not always have been able to obtain the accommodation he wanted, when he wanted, I didn’t think there was sufficient persuasive evidence of a breach of the Purchase Agreement in relation to the availability of accommodation. I noted that accommodation was described as being subject to availability, and that Mr H had managed to take 15 weeks of holiday between 2013 and 2016 using his products with the Supplier.
 - Mr H was concerned there was no market for the Allocated Property and it wouldn’t be sold at the end of the agreement, meaning he wouldn’t receive his share of the sale proceeds. However, Mr H had sold his timeshare to a third party in 2016, meaning he was no longer in a contract with the Supplier which could be breached in this way.
- The Lender had not participated in a credit relationship with Mr H that was unfair to him because:
 - Regardless of whether the Lender had carried out appropriate checks before lending to Mr H, there was a lack of evidence the loan had been unaffordable for him at the time. Indeed, Mr H had said he didn’t need the loan in the first place.
 - I thought the evidence in this complaint was too limited and vague to support a finding that the Supplier had breached the Consumer Protection from Unfair Trading Regulations 2008.
 - I didn’t think Mr H’s ability to exercise a choice to enter the Purchase Agreement or not had been significantly impaired by pressure from the Supplier. I noted in particular that Mr H had been given a cooling-off period of 14 days to cancel, which he hadn’t used.
 - It was *possible, but unlikely*, that the Supplier had breached Regulation 14(3) of the Timeshare Regulations by marketing the timeshare to Mr H at the Time of Sale as an investment. This was for the following reasons:

- Mr H's witness statement, which referred to the Supplier having marketed a timeshare to him in that way, appeared to be speaking about the May 2014 purchase and not the October 2014 purchase which was the subject of this complaint.
 - A request for clarification from Mr H had led him to make comments which suggested that he was conflating aspects of various different purchases from the Supplier. This impacted the weight I could give to his statement and comments insofar as they might be relevant to the Time of Sale in October 2014.
 - There were aspects of the circumstances surrounding the purchase which made a breach of Regulation 14(3) less likely. Mr H was already a fractional timeshare owner, so it wasn't necessary for the Supplier to promote the share in the Allocated Property to him, as he already had that. I thought it more likely the Supplier had breached Regulation 14(3) in the May 2014 sale (which hadn't been complained about), as at that time the investment feature of the fractional timeshare product was the key difference between what Mr H had and what the Supplier was trying to sell him.
 - It appeared, based on Mr H's testimony about holiday availability, and the notes made by the Supplier around the Time of Sale, that the October 2014 sales pitch was focused on getting more points so Mr H could go on the holidays he wanted.
- Even if there had been a breach of Regulation 14(3) by the Supplier at the Time of Sale, it didn't seem Mr H had been motivated at the time by the prospect of the product being an investment. The notes made at the time, and some of Mr H's testimony, suggested that increasing his holiday rights was the important factor.
- Regarding the payment by the Lender to the Supplier of a commission, I didn't think this was a reason for the complaint to be upheld. I noted the amount of commission had been relatively small at 9.91% of the amount borrowed, and that there had been nothing else about the commission arrangements which would have rendered the credit relationship between Mr H and the Lender unfair to him, or which meant it would be fair and reasonable to compensate him.

I invited the parties to the complaint to respond to my provisional decision. The Lender didn't reply. PR didn't agree with the provisional decision, and asked me to consider various additional points relating to the alleged sale of the timeshare as an investment. 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 responses from both parties, I’ve considered the case afresh and having done so, I’ve reached the same decision as that which I outlined in my provisional findings, for broadly the same reasons.

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

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

PR’s further comments in response to the provisional decision relate to the issue of whether the credit relationship between Mr H and the Lender was unfair, specifically relating to the matter of whether or not the timeshare was sold to Mr H as an investment in breach of the prohibition on selling timeshares in that way.

As outlined in my provisional decision, PR originally raised various other points of complaint, all of which I addressed at that time. But they didn’t make any further comments in relation to those in their response to my provisional decision. Indeed, they haven’t said they disagree with any of my provisional conclusions in relation to those other points. 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

I could summarise PR’s points in response to the provisional decision as follows:

- Mr H had consistently recalled the fractional timeshare being sold to him as an investment, including in his original letter of complaint to the Lender, his complaint form submitted to the Financial Ombudsman Service, and in his witness statement. While he may not have gone into extensive detail about what precisely had happened, the allegations had been consistent. It noted that Mr H was an elderly consumer and shouldn't be penalised for making some minor errors with details when the core of his testimony had been consistent.
- Mr H had not been confusing the details of different purchases. It had phoned him to try to clarify what his recollections had been, and he had explained that a meeting in Turkey which I'd cited as an example of confusion within his recollections, was where he had received a pitch for a real property, not a fractional timeshare. Mr H had correctly recalled that, at the Time of Sale, he had been in Tenerife.
- The Turkey presentation was evidence of an overall pattern of the Supplier using the concept of property investment to sell its products to consumers.
- On its phone call with Mr H he had, unprompted, provided further detail of how the Supplier had sold him the timeshare at the Time of Sale. He had said he recalled the sales presentation and that it had included representations that the timeshare was an investment, which had particularly interested him because he had a background in property. This was strong evidence both of the Supplier having breached Regulation 14(3) at the Time of Sale, and of this being material to Mr H's purchasing decision.
- It accepted that a part of the sales pitch would have been around holiday usage of the product, but it noted that this didn't mean the Supplier wouldn't have also promoted the product as an investment. The Supplier's own notes had to be treated with caution – the Supplier would not have evidenced breaches of the law within its own notes of a sale.

I've read PR's submissions carefully and listened to the phone call between it and Mr H. I don't think they adequately address the arguments I made in the appended provisional decision.

I accept that Mr H clarified on the phone call that the presentation he went to in Turkey was a separate matter concerning the prospective purchase of a property, rather than a timeshare. He commented that he may have already had a fractional timeshare with the Supplier before the Turkey presentation. Mr H then went on to comment on my provisional decision and indicated that he thought it was wrong of me to have said the Supplier hadn't presented the fractional timeshare to him as an investment. He described how the Supplier had presented the fractional timeshare to him – saying that it had explicitly framed it as an investment, that this had been the most impressive part of the presentation for him, and as a former estate agent this had been appealing.

Unfortunately, it is still not clear which of the fractional timeshare purchases Mr H is referring to during the phone call. He refers only to the time that he "signed up to fractions" (which would suggest he is referring to the May 2014 purchase) and when he describes where this took place, he says it was "Fuengirola, in Tenerife". This appears to conflate the two different fractional timeshare purchases, and I say this because Fuengirola², in mainland Spain, was where Mr H first purchased a fractional timeshare from the Supplier, while Tenerife, an island in the Atlantic Ocean, was where Mr H upgraded this timeshare at the Time of Sale.

² The purchase paperwork refers to "Mijas", which is a village neighbouring Fuengirola.

The mixing of both locations I think reinforces the observations I made in the provisional decision about elements of different purchases being jumbled together.

I think this does make it difficult to draw a positive conclusion that the Supplier must have marketed and/or sold the upgrade to Mr H as an investment in *October 2014*. And that's because I don't necessarily think the Supplier would have positioned both sales in the same way. I think it's more likely it would have positioned the original conversion to the Supplier's fractional timeshare in May 2014 as an investment, for the reasons I've summarised above and explained in further detail in the appended provisional decision, and for the additional reason that Mr H says this is what happened when he "signed up to fractions" – which was in May 2014, not October 2014. He doesn't say this is what happened when he upgraded.

Overall, I think there remains insufficient persuasive evidence that the Supplier marketed and/or sold the upgrade in October 2014 to Mr H as an investment in breach of Regulation 14(3) of the Timeshare Regulations, and so I'm unable to conclude his credit relationship with the Lender was rendered unfair to him for that reason.

I've considered PR's other points, but they don't change my views on this complaint. I acknowledge that Mr H is being asked to recall events that happened many years ago in the context of great personal loss and, as I noted in the provisional decision, it's not his fault if his memories of the relevant events are not very clear in places. But I have to work with the evidence I have, and I don't think it's been sufficient to draw the conclusions PR invites me to reach on Mr H's behalf.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H for himself and on behalf of the estate of Mrs H to accept or reject my decision before 19 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 broadly the same conclusions as our Investigator, but I've explained my findings in more detail. As a result, I'm issuing this provisional decision to give the parties to the complaint an opportunity to make further submissions.

The deadline for both parties to provide any further comments or evidence for me to consider is **22 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 H and the estate of Mrs H, 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 H's complaint is, in essence, that Shawbrook Bank Limited (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 a claim under Section 75 of the CCA.

Mr H's complaint was originally brought jointly with his wife, Mrs H. Mrs H has sadly passed away since, but Mr H has continued the complaint on behalf of her estate, in his capacity as executor. When I refer to Mr H in this decision, this should be taken to include Mrs H and her estate, as appropriate.

What happened

Mr H had previously owned a timeshare on a riverboat, which was taken over by a larger timeshare company (the 'Supplier') on an unknown date. Mr H purchased a membership to a holiday club operated by the Supplier in December 2013. I do not have information on how much he paid, but I understand it was funded by trading in his existing timeshare, along with cash.

Later, on 21 May 2014, Mr H traded in his holiday club membership for a membership in the Supplier's 'Fractional Club'. After trade-in, this membership cost £10,639, which was financed by a loan from the Lender. The membership entitled Mr H to 1,540 'points' per year, which could be exchanged for holiday accommodation within the Supplier's portfolio. Fractional Club membership was also asset backed, which meant it gave Mr H more than just holiday rights. It also included a share in the net sale proceeds of a property named on his Purchase Agreement (the 'Allocated Property') after his membership term was due to end.

None of the purchases above have been complained about, and this decision does not concern them. I've included their details to put things in context.

The purchase Mr H's complaint was made about took place on 1 October 2014. On this day he purchased more points in the Fractional Club, bringing his total holdings to 2,080 points, for a further £8,556. Mr H paid for this with another loan from the Lender, of £8,556, repayable in 180 monthly payments of £135.29 per month. I understand Mr H repaid this loan early, and it was recorded as settled by 26 November 2014.

Mr H – using a professional representative (the ‘PR’) – wrote to the Lender on 28 September 2020 (the ‘Letter of Complaint’) to complain. The complaint was not very well particularised, but I could summarise the main areas of complaint as follows:

1. Misrepresentations by the Supplier at the Time of Sale giving him a claim against the Lender under Section 75 of the CCA, which the Lender failed to accept and pay.
2. A breach of contract by the Supplier giving him 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.

(1) Section 75 of the CCA: the Supplier’s misrepresentations at the Time of Sale

Mr H has complained of misrepresentation. It’s unclear exactly what misrepresentations he alleges the Supplier to have made, however I can see he’s expressed concerns about the following matters which could potentially amount to misrepresentation:

1. The Supplier told him that Fractional Club membership was an “investment” when that was not true because there was no resale market.
2. The Supplier told him that the purchase would solve some of the issues he was having with availability of holidays, but that wasn’t true as he continued to have problems and had to compromise on dates or location.

Mr H says that he has a claim against the Supplier in respect of one or more of the misrepresentations set out above, and therefore, under Section 75 of the CCA, he has a like claim against the Lender, who, with the Supplier, is jointly and severally liable to Mr H.

(2) Section 75 of the CCA: the Supplier’s breach of contract

Mr H says that he found it difficult to book the holidays he wanted, when he wanted. He has also said he’s concerned there is no resale market for the Allocated Property, calling into question whether there will be any return at the end of the membership.

As a result of the above, I understand Mr H’s position is that he has a breach of contract claim against the Supplier, and therefore, under Section 75 of the CCA, he has a like claim against the Lender, who, with the Supplier, is jointly and severally liable to Mr H.

(3) Section 140A of the CCA: the Lender’s participation in an unfair credit relationship

The Letter of Complaint set out several reasons why Mr H says that the credit relationship between him and the Lender was unfair to him under Section 140A of the CCA. As I’ve already indicated, the complaint was poorly particularised, but I’ve identified the following concerns which would be relevant to a complaint that the credit relationship was unfair:

1. Fractional Club membership was marketed and sold to him as an investment in breach of regulation 14(3) of the Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010 (the ‘Timeshare Regulations’).
2. He was pressured into purchasing Fractional Club membership by the Supplier.
3. The Supplier’s sales presentation at the Time of Sale included misleading actions and/or misleading omissions under the Consumer Protection from Unfair Trading Regulations 2008 (the ‘CPUT Regulations’) as well as a prohibited practice under Schedule 1 of those Regulations.
4. The decision to lend was irresponsible because the Lender didn’t carry out the right creditworthiness assessment.
5. The Lender paid the Supplier a commission that was not properly disclosed.

PR also supplied a witness statement from Mr H dated 6 July 2020 which reiterated some of the points of complaint and added others:

- He had never been told the contract was in perpetuity or what the implications were of this on their family.
- He was told if he paid off the loan in a year he wouldn't have to pay any interest.
- He was told he'd get £100 cashback per month for a year if he signed up on the day.

The Lender dealt with Mr H's concerns as a complaint and issued its final response letter on 7 March 2021, rejecting it on every ground.

Mr H then referred the complaint to the Financial Ombudsman Service. It was assessed by an Investigator who, having considered the information on file, upheld the complaint on the basis the Supplier had sold the Fractional Club membership to Mr H as an investment in contravention of the Timeshare Regulations, rendering the credit relationship between him and the Lender unfair.

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

I think I could fairly summarise the Lender's arguments against our Investigator's assessment as follows:

- It had concerns about the witness statement, specifically that it hadn't been signed by Mr H and it lacked detail relating to the October 2014 purchase.
- It felt that Mr H's allegations that the product has been sold as an investment had been coached by PR.
- It considered there was evidence that Mr H had not made the October 2014 purchase because he thought it was an investment. Rather, it considered he had made the purchase to increase his holiday rights. The Lender pointed out that Mr H had obtained 540 points of extra holiday rights, that he had written much about the holiday-related benefits of the product, and that the notes made by the Supplier at the Time of Sale said Mr H had made the purchase to obtain more points.

The legal and regulatory context

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

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

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

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

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

The FCA's Principles

The rules on consumer credit sit alongside the wider obligations of firms, such as the Principles for Businesses ('PRIN'). Set out below are those that are most relevant to this complaint:

- Principle 6
- Principle 7
- Principle 8

What I've 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 currently think this complaint should be upheld.

But 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.

What is more, I have made my decision on the balance of probabilities – which means I have based it on what I think is more likely than not to have happened given the available evidence and the wider circumstances.

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.

In short, a claim against the Lender under Section 75 essentially mirrors the claim Mr H could make against 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 does not dispute that the relevant conditions are met in this complaint. And as I'm satisfied that Section 75 applies, if I find that the Supplier is liable for having misrepresented something to Mr H at the Time of Sale, the Lender is also liable.

This part of the complaint was made for several reasons that I set out at the start of this decision. They include the suggestion that Fractional Club membership had been misrepresented by the Supplier because Mr H was told that the membership was an investment when that was not true. However, I think it's clear the membership did have an investment element to it. Mr H's share in the Allocated Property was clearly the purchase of a share of the net sale proceeds of a specific property in a specific resort. And while, like any investment, the value of the Allocated Property, and therefore Mr H's share, could go up or down, I don't think it was false to describe it as an investment.

Mr H also said that he was told that buying the Fractional Club membership would solve some of the problems he was having with availability of holidays, but he later discovered that he still had to compromise on dates or location. While I recognise that Mr H has concerns about the way in which the Fractional Club membership was sold, he hasn't persuaded me that his concerns amount to an actionable misrepresentation by the Supplier at the Time of Sale. Unfortunately, the allegations are rather vague and it's difficult to conclude that the statements he's attributed to the Supplier were untrue. I think it was probably the case that the fact Mr H had more points following the October 2014 purchase, meant more holidays would have been available to him, for example. So in that sense, it wouldn't be false of the Supplier to have said that the purchase would solve some of the problems he was having with availability. The allegations are simply too vague to identify any specific false statement.

Mr H has said the Supplier told him he'd pay no interest on the loan if he paid it off within a year, and that he'd receive £100 per month for a year. I can see Mr H signed the loan agreement along with some supplementary documents. I think these make it clear enough that the loan was not interest-free, so I think it's difficult to conclude that the terms of the loan must have been misrepresented. Mr H paid off the loan within two months, so he would have paid very little interest. The Supplier has said that it did offer a total of £1,000 as a "travel savings bonus" to Mr H, for signing up. There doesn't appear to be anything in writing to support this, or Mr H's recollection that it was £100 per month over a year. But I think, ultimately, even if the Supplier incorrectly stated Mr H would receive £1,200 when in fact he was due to receive £1,000, it's unlikely to have been material in the sense that he wouldn't have proceeded with the purchase had he been told the correct amount. The difference, when looking at the amounts of money involved overall, was rather small.

Finally, Mr H also says the Supplier failed to tell him that the Fractional Club membership was in perpetuity. An omission does not generally amount to an actionable misrepresentation but, in any case, the membership was not in perpetuity. I think Mr H is mistaken about that. Based on my reading of the Purchase Agreement, the membership was intended to last for 19 years.

What's more, as there's nothing else on file that persuades there were any false statements of existing fact made to Mr H by the Supplier at the Time of Sale, I do not think there was an actionable misrepresentation by the Supplier for the reasons he alleges.

For these reasons, therefore, I do not think the Lender is liable to pay Mr H any compensation for the alleged misrepresentations of the Supplier. And with that being the case, I do not think the Lender acted unfairly or unreasonably when it dealt with the Section 75 claim in question.

Section 75 of the CCA: the Supplier's breach of contract

I've already summarised how Section 75 of the CCA works and why it gives Mr H a right of recourse against the Lender. So, it isn't 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.

Mr H says that he could not holiday where and when he wanted to – which, on my reading of the complaint, suggests that he considers that the Supplier was not living up to its end of the bargain, and had breached the Purchase Agreement. Like any holiday accommodation, availability was not unlimited – given the higher demand at peak times, like school holidays, for instance. Some of the sales paperwork signed by Mr H states that the availability of holidays was subject to demand. It also looks like Mr H took 15 weeks of holiday on his memberships with the Supplier between 2013 and 2016. I accept that some of these holidays may have been taken on a previous membership with the Supplier and that he may not have been able to take certain holidays that he wanted to go on. But I have not seen enough to persuade me that the Supplier had breached the terms of the Purchase Agreement.

Mr H has also expressed concerns about the resale market for the Allocated Property, from which I understand he considers there is no guarantee that he would have received his share of the net sale proceeds of the Allocated Property. In other words, when the time comes for the Allocated Property to be sold, he would not have received his share of the sales proceeds. Mr H sold his Fractional Club membership to a third party in 2016, so there can no longer be any breach of contract by the Supplier in relation to this (as Mr H and the Supplier are no longer in a contract), but even if Mr H still had his membership, any potential breach of contract in relation to the resale of the Allocated Property would be in the future, and by no means certain.

Overall, therefore, from the evidence I have seen to date, I do not think the Lender is liable to pay Mr H 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 when it dealt with the Section 75 claim in question.

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

I have already explained why I am not persuaded that the contract entered into by Mr H was misrepresented (or breached) by the Supplier in a way that makes for a successful claim under Section 75 of the CCA and outcome in this complaint. But Mr H also says that the credit relationship between him and the Lender was unfair under Section 140A of the CCA, when looking at all the circumstances of the case, including parts of the Supplier's sales process at the Time of Sale that he has concerns about. It is those concerns that I explore here.

As Section 140A of the CCA is relevant law, I do have to consider it. So, in determining what is fair and reasonable in all the circumstances of the case, I will consider whether the credit relationship between the Mr H and the Lender was unfair.

Under Section 140A of the CCA, a debtor-creditor relationship can be found to have been or be unfair to the debtor because of one or more of the following: the terms of the credit agreement itself; how the creditor exercised or enforced its rights under the agreement; and any other thing done (or not done) by, or on behalf of, the creditor (either before or after the making of the agreement or any related agreement) (s.140A(1) CCA). Such a finding may also be based on the terms of any related agreement (which here, includes the Purchase Agreement) and, when combined with Section 56 of the CCA, on anything done or not done by the supplier on the creditor's behalf before the making of the credit agreement or any related agreement.

Section 56 plays an important role in the CCA because it defines the terms "antecedent negotiations" and "negotiator". As a result, it provides a foundation for a number of provisions that follow it. But it also creates a statutory agency in particular circumstances. And while Section 56(1) sets out three of them, the most relevant to this complaint are negotiations conducted by the supplier in relation to a transaction financed or proposed to be financed by a debtor-creditor-supplier agreement.

A debtor-creditor-supplier agreement is defined by Section 12(b) of the CCA as "*a restricted-use credit agreement which falls within section 11(1)(b) and is made by the creditor under pre-existing arrangements, or in contemplation of future arrangements, between himself and the supplier [...]*". And Section 11(1)(b) of the CCA says that a restricted-use credit agreement is a regulated credit agreement used to "*finance a transaction between the debtor and a person (the 'supplier') other than the creditor [...]*" and "*restricted-use credit shall be construed accordingly.*"

The Lender doesn't dispute that there was a pre-existing arrangement between it and the Supplier. So, the negotiations conducted by the Supplier during the sale of Mr H's membership of the Fractional Club were conducted in relation to a transaction financed or proposed to be financed by a debtor-creditor-supplier agreement as defined by Section 12(b). That made them antecedent negotiations under Section 56(1)(c) – which, in turn, meant that they were conducted by the Supplier as an agent for the Lender as per Section 56(2). And such antecedent negotiations were "any other thing done (or not done) by, or on behalf of, the creditor" under s.140(1)(c) CCA.

Antecedent negotiations under Section 56 cover both the acts and omissions of the Supplier, as Lord Sumption made clear in *Plevin*, at paragraph 31:

"[Section] 56 provides that [when] antecedent negotiations for a debtor-creditor-supplier agreement are conducted by a credit-broker or the supplier, the negotiations are "deemed to be conducted by the negotiator in the capacity of agent of the creditor as well as in his actual capacity". The result is that the debtor's statutory rights of withdrawal from prospective agreements, cancellation and rescission may arise on account of the conduct of the negotiator whether or not he was the creditor's agent.' [...] Sections 56 and 140A(3) provide for a deemed agency, even in a case where there is no actual one. [...] These provisions are there because without them the creditor's responsibility would be engaged only by its own acts or omissions or those of its agents."

And this was recognised by Mrs Justice Collins Rice in *Shawbrook & BPF v FOS* at paragraph 135:

"By virtue of the deemed agency provision of s.56, therefore, acts or omissions 'by or on behalf of' the bank within s.140A(1)(c) may include acts or omissions of the timeshare company in 'antecedent negotiations' with the consumer".

In the case of *Scotland & Reast*, the Court of Appeal said, at paragraph 56, that the effect of Section 56(2) of the CCA meant that “negotiations are deemed to have been conducted by the negotiator as agent for the creditor, and that is so irrespective of what the position would have been at common law” before going on to say the following in paragraph 74:

“[...] there is nothing in the wording of s.56(2) to suggest any legislative intent to limit its application so as to exclude s.140A. Moreover, the words in s.140A(1)(c) “any other thing done (or not done) by, or on behalf of, the creditor” are entirely apposite to include antecedent negotiations falling within the scope of s.56(1)(c) and which are deemed by s.56(2) to have been conducted by the supplier as agent of the creditor. Indeed the purpose of s.56(2) is to render the creditor responsible for such statements made by the negotiator and so it seems to me wholly consistent with the scheme of the Act that, where appropriate, they should be taken into account in assessing whether the relationship between the creditor and the debtor is unfair.”³

So, the Supplier is deemed to be Lender’s statutory agent for the purpose of the pre-contractual negotiations.

However, an assessment of unfairness under Section 140A isn’t limited to what happened immediately before or at the time a credit agreement and related agreement were entered into. The High Court held in *Patel* (which was recently approved by the Supreme Court in the case of *Smith*), that determining whether or not the relationship complained of was unfair had to be made “having regard to the entirety of the relationship and all potentially relevant matters up to the time of making the determination” – which was the date of the trial in the case of an existing credit relationship or otherwise the date the credit relationship ended.

The breadth of the unfair relationship test under Section 140A, therefore, is stark. But it isn’t a right afforded to a debtor simply because of a breach of a legal or equitable duty. As the Supreme Court said in *Plevin* (at paragraph 17):

“Section 140A [...] does not impose any obligation and is not concerned with the question whether the creditor or anyone else is in breach of a duty. It is concerned with [...] whether the creditor’s relationship with the debtor was unfair.”

Instead, it was said by the Supreme Court in *Plevin* that the protection afforded to debtors by Section 140A is the consequence of all of the relevant facts.

I have considered the entirety of the credit relationship between Mr H and the Lender along with all of the circumstances of the complaint and I do not 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 Supplier’s sales and marketing practices at the Time of Sale – which includes training material that I think is likely to be relevant to the sale; and
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.

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

³ The Court of Appeal’s decision in *Scotland* was recently followed in *Smith*.

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

Mr H's complaint about the Lender being party to an unfair credit relationship was also made for several reasons, all of which I set out at the start of this decision.

They include the allegation that the Supplier misled Mr H and carried on unfair commercial practices which were prohibited under the CPUT Regulations. But given the limited and rather vague evidence in this complaint, I am not persuaded that anything done or not done by the Supplier was prohibited under the CPUT Regulations.

The PR says that the right checks weren't carried out before the Lender lent to Mr H. I haven't seen anything to persuade me that was the case in this complaint given its circumstances. But even if I were to find that the Lender failed to do everything it should have when it agreed to lend (and I make no such finding), I would have to be satisfied that the money lent to Mr H 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. Again, from the information provided, I am not satisfied that the lending was unaffordable for Mr H. In fact, he has stated that he could afford to pay for the Fractional Club membership outright and didn't need a loan (and he had paid it off within two months) so it seems unlikely to me that the loan was unaffordable.

Mr H says that he was pressured by the Supplier into adding more points to his Fractional Club membership at the Time of Sale. I acknowledge that the Supplier's sales process tended to be lengthy, and Mr H may have felt worn out by the end of it. But he hasn't said much about what was said and/or done by the Supplier during his sales presentation that made him feel as though he had no choice but to add more points to his Fractional Club membership when he simply did not want to. He was also given a 14-day cooling off period and he hasn't explained why he didn't cancel the purchase during that time if he had only agreed to it because of pressure put on him by the Supplier. And with all of that being the case, there is insufficient evidence to demonstrate that Mr H made the decision to add more points to his Fractional Club membership because his ability to exercise that choice was significantly impaired by pressure from the Supplier.

I'm not persuaded, therefore, that Mr H's credit relationship with the Lender was rendered unfair to him under Section 140A for any of the reasons above. But there is another reason, perhaps the main reason, why he says his credit relationship with the Lender was unfair to him. 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.

Was Fractional Club membership marketed and sold at the Time of Sale as an investment in breach of regulation 14(3) of the Timeshare Regulations?

The Lender does not dispute, and I am satisfied, that Mr H 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 membership of the Fractional Club 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 PR says that the Supplier did exactly that at the Time of Sale. So, that is what I have considered next.

The term “investment” is not defined in the Timeshare Regulations. In *Shawbrook & BPF v FOS*, the parties agreed that, 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*” at [56]. I will use the same definition.

As mentioned earlier, I think Mr H’s share in the Allocated Property clearly constituted an investment as it offered him the prospect of a financial return – whether or not, like all investments, that was more than what he 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. They just regulated how such products were marketed and sold.

To conclude, therefore, that Fractional Club membership was marketed or sold to Mr H 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 evidence in this complaint that the Supplier made efforts to avoid specifically describing membership of the Fractional Club as an ‘investment’ or quantifying to prospective purchasers, such as Mr H, 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. There were, for instance, disclaimers in the contemporaneous paperwork that state that Fractional Club membership was for the primary purpose of holidays and that no representations were made as to the future value of someone’s share in the Allocated Property.

With that said, I acknowledge that the Supplier’s training material left open the possibility that the sales representative may have positioned Fractional Club membership as an investment.

I think it’s important to restate at this point that the purchase Mr H has complained about was not Mr H’s initial purchase of membership in the Fractional Club, but was a “top up” of his fractional points. Mr H did not make a complaint about the initial purchase, and he would now be too late to do so.

This is important because I think Mr H’s recollections in his witness statement appear primarily to refer to the *initial* sale of the Fractional Club membership. The statement is ostensibly about the October 2014 sale, however Mr H speaks about it as though it was the first purchase he’d made in the Fractional Club. I requested clarification from Mr H and he said:

“As best as I can remember...we only came by [the Supplier] by way of our narrowboat [timeshare] who they bought out and we were transferred in. We had no real knowledge or experience of timeshare. I know at first we were in a points system and our upgrades were really around increasing our priority when it came to booking the more liked places. The change to fractional was based on their presentation around an investment with profits. The first purchase in 2014 was around them having just received a surrender which they could offer at a more reasonable price and it was a very good deal they said. When we were in Turkey they tried to interest us in the investment angle by purchasing a complete apartment at around £180,000 I believe but [Mrs H] was dead against that. They continued with the

investment and profit in fractions and that it had to be sold off in 19 years and we could share in the profits as property always increased in value over the long term. I think that we were somehow led to believe that this was better than our current holdings. We later learnt that there was a question mark over whether or not there would be a market for these properties.”

While I don't doubt that Mr H is recalling events which took place long ago to the best of his ability, I note that neither the original Fractional Club purchase nor the top up of points, appears to have taken place in Turkey. The contracts were signed in Mijas, Spain and Tenerife respectively. Unfortunately, it does appear that elements of different purchases have become jumbled together in Mr H's testimony and it has made it difficult to place as much reliance on it as I otherwise would have.

I accept that it's *possible* that Fractional Club membership was marketed and sold to Mr H as an investment in breach of Regulation 14(3) given the difficulty the Supplier was likely to have had in presenting a share in the net sales proceeds of the Allocated Property as an important feature of Fractional Club membership without breaching the relevant prohibition. I think it's more likely that the Supplier would have placed a greater emphasis on this when Mr H converted his previous membership with the Supplier to the Fractional Club in May 2014, as the investment aspect of the product was the main feature of it which set it apart from the membership he already had.

I think it's possible the Supplier would have promoted the investment aspect of the product again in October 2014, but I find this a little less likely because it seems based on Mr H's testimony about holiday availability, and the notes made by the Supplier at the time, that this sale was focused on getting more points so Mr H could go on the holidays he wanted.

But even if I am wrong to conclude that, during the October 2014 sale, the membership was unlikely to have been marketed or sold as an investment, I am not currently persuaded that would make a difference to the outcome in this complaint anyway.

Was the credit relationship between the Lender and Mr H rendered unfair?

As the Supreme Court's judgment in *Plevin* makes clear, it does not automatically follow that regulatory breaches 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* and *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 seems to me that, if I am to conclude that a breach of Regulation 14(3) led to a credit relationship between Mr H 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.

In other words, even if the Supplier breached Regulation 14(3), this may not have rendered the credit relationship unfair, if the breach was not material to Mr H's decision to add more points to his Fractional Club membership.

In this case, I'm not convinced that Mr H was motivated to top up his points by the prospect of the Fractional Club membership being an investment. I've already outlined the difficulties I've had with Mr H's testimony. That's not his fault. As I've said, I've no reason to believe his recollections are anything other than genuine. I don't feel able to conclude from what he's said however, that any investment element of the Fractional Club membership was a material factor in him deciding to top up his points in October 2014. The Supplier's notes from the time read as follows:

"[Fractional Club] to [Fractional Club] for more points 2080 with 2 weeks at Paradise [resort]. [Lender] non con[solidation] with [Travel Savings Bonus] in place all previous settled. Difference in [maintenance fees] included for 2014 and connex in membership. No queries happy to proceed."

And a few days later:

"Called clients 100% happy to proceed and looking at the brochure now for the next break".

While these notes don't definitively evidence that Mr H was *not* motivated by the prospect of the product being an investment, I think they do point to obtaining more points for holidays being an important motivation for him at the time. I think the circumstances also make it inherently more likely that this particular purchase was motivated by the desire to obtain better or more holidays, as it involved adding a significant number (over 500) of points to the membership, which would lead to a greater ability to book holiday accommodation. It is also consistent with some of Mr H's comments around having problems with availability or increasing his booking priority.

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 H's decision to purchase Fractional Club membership at the Time of Sale was motivated by the prospect of a financial gain (i.e., a profit). On the contrary, I think the evidence suggests he would have pressed ahead with his 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 Mr H and the Lender was unfair to him even if the Supplier had breached Regulation 14(3).

The payment of commission by the Lender to the Supplier

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; 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 H 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 H 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 H, 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 H 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 H.

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 H entered into wasn't high. At £855.60, it was only 9.91% of the amount borrowed and even less than that (5.42%) 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 H 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 H 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 H.

Section 140A: Conclusion

In conclusion, therefore, given all of the facts and circumstances of this complaint, I don't think the credit relationship between the Lender and Mr H was unfair to him for the purposes

of Section 140A. And taking everything into account, I think it's fair and reasonable to reject this aspect of the complaint on that basis.

Commission: The Alternative Grounds of Complaint

While I've found that Mr H'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 H 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 H (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 H 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, 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.

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 H's Section 75 claim, and I am not persuaded that the Lender was party to a credit relationship with him under the Credit 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.

If there is any further information on this complaint that Mr H wishes to provide, I would invite him to do so in response to this provisional decision.

My provisional decision

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

Will Culley
Ombudsman