DRN-6089741

The complaint

Mr H complaint is, in essence, that Clydesdale Financial Services Limited trading as Barclays Partner Finance (the 'Lender') acted unfairly and unreasonably by (1) being party to an unfair credit relationship with them under Section 140A of the Consumer Credit Act 1974 (as amended) (the 'CCA') and (2) deciding against paying [a claim/claims] under Section 75 of the CCA.

What happened

Mr H purchased timeshare from a timeshare provider (the 'Supplier') as follows:

- 26 May 2015 – Fractional Property Owner's Club ('FPOC') membership including 1,200 fractional points for £16,989 ('Purchase Agreement 1').

- 20 December 2015 – Signature Collection Membership equivalent to 1,540 fractional points £12,448 – having traded in his above FPOC membership ('Purchase Agreement 2').

  (which, when appropriate, I'll simply refer to as the 'Purchase Agreements')

As this complaint is concerned with the purchases on the above dates, those are the 'Times of Sale' for the purposes of my decision.

FPOC membership was 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 Purchase Agreement 1 (which I'll refer to as the 'Allocated Property').

Signature Club membership was asset backed, like FPOC membership, but also included the right to stay in the property named on Purchase Agreement 2 (I'll refer to this as the 'Allocated Suite') during a specified week each year. Alternatively, Mr H could exchange that right each year for 1,540 fractional points to spend on holidays with the Supplier or its affiliates.

Mr H paid for his fractional points by taking the following amounts of finance of from the Lender:

- £16,989 on 26 May 2015 ('Credit Agreement 1')

- £29,272 on 20 December 2015 ('Credit Agreement 2'), which included an amount to pay off/consolidate Credit Agreement 1.

(which, when appropriate, I'll simply refer to as the 'Credit Agreements')

Mr H – using a professional representative (the 'PR') – wrote to the Lender on 18 March 2021 (the 'Letter of Complaint') to raise several different concerns. Since then, the PR has raised some further matters it says are relevant to the outcome of this complaint. As both sides are familiar with Mrs H's concerns, it isn't necessary to repeat them here beyond the summary above.

The Lender didn't provide a final response to Mr H's concerns in the time allowed, so the PR referred the complaint to the Financial Ombudsman Service. It was assessed by an Investigator who, having considered the information on file, rejected the complaint on its merits.

Mr H disagreed with the Investigator's assessment and asked for an Ombudsman's decision – which is why it was passed to me. I issued a provisional decision explaining that I was not planning to uphold the complaint.

The PR responded on Mr H's behalf to say it disagreed and provided some additional comments for me to consider.

The Lender responded to say it agreed with my provisional decision.

The legal and regulatory context

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

The legal and regulatory context that I think is relevant to this complaint is no different to that shared in several hundred ombudsman decisions on very similar complaints. And with that being the case, it is not necessary to set it out here. In addition to that, I think the following regulatory rules/guidance are also relevant:

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

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

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

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

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

- Principle 6
- Principle 7
- Principle 8

What I've 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. Having done so, I've reached the same decision as my provisional one. As such, I do not uphold this complaint. My provisional findings are repeated below, as well as additional findings following the PR's response.

START OF COPY OF PROVISIONAL FINDINGS

Section 75 of the CCA: the Supplier's misrepresentations at the Times 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") 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 FPOC membership had been misrepresented by the Supplier at the Time of Sale because Mr H was:

(1) Told by the Supplier that FPOC and Signature Collection membership had a guaranteed end date when that was not true.

(2) Told by the Supplier that they owned a 'fraction' of the Allocated Property and Allocated Suite when that was not true as it was owned by a trustee.

(3) Told by the Supplier that FPOC and Signature Collection membership were an "investment" when that was not true.

Neither the PR nor Mr H have set out in any detail what words and/or phrases where allegedly used by the Supplier to misrepresent FPOC and Signature Collection membership for the reason given in points 1 or 2. However, the PR says that such representations were untrue because the Allocated Property and Allocated Suite were legally owned by a trustee and there was no indication of what duty of care it had to actively market and sell the property. Further, there is no guarantee that any sale will result at all, leaving prospective members to pay their annual management charge for an indefinite and unspecified period.

However, I cannot see why the phrases in points 1 or 2 above would have been untrue at the Time of Sale even if it was said. It seems to me to reflect the main thrust of the contracts Mr H entered. And while, under the relevant FPOC and Signature Collection Rules, the sale of the Allocated Property and Allocated Suite could be postponed for up to two years by the 'Vendor'[1], longer than that if there were problems selling and the 'Owners'[2] agreed, or for an otherwise specified period provided there was unanimous agreement in writing from the Owners, that does not render the representation above untrue. So, I am not persuaded that the representation above constituted a false statement of fact even if it was made.

[1] As defined in the relevant rules.
[2] As defined in the relevant rules.

As for point 3, it does not strike me as a misrepresentation even if such a representation had been made by the Supplier (which I make no formal finding on). Telling prospective members that they were investing their money because they were buying a fraction or share of one of the Supplier's properties was not untrue – nor was it untrue to tell prospective members that they would receive some money when the allocated property is sold. After all, a share in an allocated property was clearly the purchase of a share of the net sale proceeds of a specific property in a specific resort. And while the PR might question the exact legal mechanism used to give prospective members that interest, it did not change the fact that they acquired such an interest.

The PR has raised other matters as potential misrepresentations, but it seems to me that they are not allegations of the Supplier saying something that was untrue. Rather, it seems to me that these are allegations that Mr H wasn't given all the information he needed at the Time of Sale, and I will deal with this further below.

So, while I recognise that Mr H and the PR have concerns about the way in which FPOC and Signature Collection 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 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.

Mr H says that he could not holiday where and when he wanted to – which, on my reading of the complaint, suggests that the Supplier was not living up to its end of the bargain, potentially breaching the Purchase Agreements.

Yet, like any holiday accommodation, availability was not unlimited – given the higher demand at peak times like school holidays. Some of the sales paperwork likely to have been signed by Mr H states that the availability of holidays was/is subject to demand. I accept that he may not have been able to take certain holidays. But I have not seen enough to persuade me that the Supplier breached the terms of the Purchase Agreements.

So, from the evidence I have seen, 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 in relation to this aspect of the complaint either.

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

I've already explained why I'm not persuaded that FPOC membership was actionably misrepresented by the Supplier at the Times of Sale. But there are other aspects of the sales processes that, being the subject of dissatisfaction, I must explore with
Section 140A in mind if I'm to consider this complaint in full – which is what I've done next.

Having considered the entirety of the credit relationships between Mr H and the Lender along with all of the circumstances of the complaint, I don't think the credit relationships between them were 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.

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[3].

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

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

Mr H's complaint about the Lender being party to unfair credit relationships was and is made for several reasons.

The PR says, for instance, that:

1. Mr H were pressured by the Supplier into purchasing FPOC membership at the Time of Sale.

2. The right checks weren't carried out before the Lender lent to Mr H.

3. The loan interest was excessive.

4. Mr H was not given a choice of lender by the Supplier.

However, as things currently stand, none of these strike me as reasons why this complaint should succeed.

I acknowledge that Mr H 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 the sales presentations that made him feel as if he had no choice but to purchase FPOC and Signature Collection membership when he simply did not want to. Mr H was also given 14-day cooling off periods and he has not provided a credible explanation for why he did not cancel the memberships during those times. And with all of that being the case, there is insufficient evidence to demonstrate that Mr H made the decision to purchase FPOC and Signature Collection membership because his ability to exercise that choice was significantly impaired by pressure from the Supplier.

[3] Credit Agreement 2 is related to Credit Agreement 1, since it consolidated the earlier agreement and was between the same creditor and debtor.

I haven't seen anything to persuade me that the right checks weren't carried out by the Lender given this complaint's 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 relationships with the Lender were unfair to him for this reason. But from the information provided, I am not satisfied that the lending was unaffordable for the Mr H.

Mr H and the PR have not explained how, if it were true, Mr H not being offered a different lender to pay for FPOC membership caused him any unfairness or financial loss. Mr H was aware of the interest rate as set out on the face of the Credit Agreements, as well as the term of the loans 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.

Overall, therefore, I don't think that Mr H credit relationships with the Lender were rendered unfair to them under Section 140A for any of the reasons above. But there are nother reasons why the PR now says the credit relationships with the Lender were unfair to them. And that's the suggestion that FPOC and Signature Collection membership were marketed and sold to Mr H as an investment in breach of prohibition against selling timeshares in that way, and the Lender paying commission to the Supplier for arranging the Credit Agreements.

The Supplier's alleged breach of Regulation 14(3) of the Timeshare Regulations[4]

The Lender does not dispute, and I am satisfied, that Mr H's FPOC 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 FPOC and Signature Collection membership as an investment. This is what the provision said at the Times 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 Times 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.

Shares in the Allocated Property and Allocated Suite clearly constituted investments as they offered Mr H the prospect of a financial return – whether or not, like all investments, that was more than what they first put into it. But it is important to note that the fact FPOC and Signature Collection membership included an investment element did not, itself, transgress the prohibition in Regulation 14(3). That provision prohibits the *marketing and selling* of a

[4] The Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010

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.

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

To conclude, therefore, that FPOC and/or Signature Collection 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 them as an investment, i.e. told them or led them to believe that the memberships 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 FPOC and Signature Collection membership was marketed and/or sold by the Supplier at the Times 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 the memberships 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 and Allocated Suite along with the investment considerations, risks and rewards attached to them.

On the other hand, the Supplier's sales process left open the possibility that the sales representative may have positioned FPOC and/or Signature Collection membership as an investment. So, I accept that it's equally possible that the memberships were marketed and sold to Mr H 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 particular issue for the purposes of this decision.

Was the credit relationship between the Lender and the Consumer rendered unfair?

Having found that it was possible that the Supplier breached Regulation 14(3) of the Timeshare Regulations at the Times of Sale, I now need to consider what impact such breaches had on the fairness of the credit relationships between Mr H and the Lender under the Credit Agreements and related Purchase Agreements. This is because 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 credit relationships between Mr H and the Lender that were unfair to them and warranted relief as a result, it is important to consider whether the Supplier's breach of Regulation 14(3) led Mr H to enter into the Purchase Agreements and the Credit Agreements.

But on my reading of the evidence before me, the prospect of a financial gain from FPOC and Signature Collection membership was not an important and motivating factor when Mr H decided to go ahead with their purchases. I say this because Mr H's statement of truth, provided on 24 November 2023 but dated March 2021, does not persuade me that either purchase was motivated by the prospect of a financial gain.

Time of Sale 1

About FPOC membership, Mr H said he was told:

- FPOC membership would make it cheaper to get a luxury holiday.
- He would get money back from his fractional share once the apartment is sold in 10 years (although not much detail was provided about this).

This does not persuade me that Mr H hoped or expected to profit from the purchase – or that he otherwise would not have gone ahead with it. He mentions getting some money back but does not indicate that he hoped or expected this to be a profit.

Time of Sale 2

About Signature Collection membership, Mr H said, *"we agreed to upgrade our membership to get most of benefits from the Signature apartment."*

So, that appears to make clear that the purchase was motivated by the benefit of being able to stay in the Allocated Suite.

Indeed, Mr H also says that he *"got no accurate/detailed information regarding whether the ownership would increase in value or be easy to sell in the future."* If the possibility of making a profit had been important to Mr H at that time, it seems likely that he would've made further enquiries about the sales process and the likely value of his ownership.

That doesn't mean Mr H had no interest in a share in the Allocated Property and Allocated Suite. After all, that wouldn't be surprising given the nature of the product at the centre of this complaint. But as Mr H himself does not persuade me that his purchases were motivated by the possibility of a profit, I don't think any breach or breaches of Regulation 14(3) by the Supplier were likely to have been material to the decisions Mr H ultimately made.

The PR has also provided a webform and questionnaire from a timeshare advice company, which appears to have referred Mr H onto the PR. And a call note the PR says was taken when it initially spoke to Mr H. Those do describe the timeshares as an investment and/or mentioned profit. But I think that Mr H's statement of truth is likely the more reliable evidence here. This appears to have been written or at least approved by him after he spoke to the PR. And I would expect it to more reliably set out his detailed recollections of the sale than the other evidence submitted, which is less detailed and in the case of the questionnaire and call note were not written by Mr H himself.

On balance, therefore, even if the Supplier had marketed or sold the FPOC and/or Signature Collection membership as an investment in breach of Regulation 14(3) of the Timeshare Regulations, I am not persuaded that Mr H's decisions to purchase at the Times of Sale were motivated by the prospect of a financial gain (i.e., a profit). On the contrary, I think it is likely that Mr H would have pressed ahead with the purchases whether or not there had been a breach of Regulation 14(3). And for that reason, I do not think the credit relationships between Mr H and the Lender were unfair to them due to any breach of Regulation 14(3) by the Supplier.

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

The PR says that Mr H were not given sufficient information at the Times of Sale by the Supplier in order to make an informed choice.

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 possible that the Supplier did not give Mr H sufficient information, in good time, on the various charges they could have been subject to as FPOC and Signature Collection members in order to satisfy the requirements of Regulation 12 of the 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 H nor the PR have persuaded me that they would not have pressed ahead with their purchase had the finer details of the FPOC'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 (although it hasn't specified what terms), I can't see that any such terms were operated unfairly against Mr H 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 FPOC and/or Signature Collection 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.

Commission: The Section 140A unfair relationship complaint

Mr H 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 relationships with the Lender were unfair to him for reasons relating to commission given the facts and circumstances of this complaint.

I haven't seen anything to suggest that the Lender and Supplier were tied to one another contractually or commercially in a way that wasn't properly disclosed to Mr 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 think any such failure is itself a reason to find the credit relationship in question unfair to Mr H.

Credit Agreement 1

In contrast to the facts of Mr Johnson's case, the amount of commission paid by the Lender to the Supplier for arranging Credit Agreement 2 wasn't high. At a maximum of £288.81, it was only up to 1.7% of the amount borrowed and 2.5% as a proportion of the charge for credit. So, if Mr H had known at the Time of Sale that the Supplier was going to be paid a flat rate of commission at that level, I'm not persuaded that 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 FPOC 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.

Credit Agreement 2

Here the amount of commission paid by the Lender to the Supplier for arranging Credit Agreement 2 wasn't high. At £731.80, it was only 2.5% of the amount borrowed and even less than that (2.3%) as a proportion of the charge for credit. So, if Mr H had known at the Time of Sale that the Supplier was going to be paid a flat rate of commission at that level, I'm not persuaded that 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 FPOC 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, in both cases 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 Agreements. And as it wasn't acting as an agent of Mr H but as the supplier of contractual rights that he obtained under the Purchase Agreements, the transactions don't strike me as ones with features that suggest the Supplier had an obligation of 'loyalty' to Mr H 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 H.

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 relationships between Mr H and the Lender under the Credit Agreement and related Purchase Agreement was unfair to him. And as things 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 H 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 Times 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 Times 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 Mr H 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.

END OF COPY OF PROVISIONAL FINDINGS

The PR's additional comments following my provisional decision

In summary, the PR said:

- At both Times of Sale Fractional Club and Signature Collection membership were sold or marketed as an investment.

- I should uphold the complaint in line with other ombudsman decisions (two examples were referred to) and *Shawbrook Bank Ltd, R (On the Application Of) v Financial Ombudsman Service Ltd* [2023] EWHC 1069 (Admin) (05 May 2023), which confirm a breach of Regulation 14(3) of the Timeshare Regulations is, in itself, sufficient to create an unfair relationship regardless of the customer's motivations for the purchase.

Having considered the PR's comments, I am not persuaded to depart from my provisional findings above.

I note that of the two ombudsman decisions highlighted, one rejected the complaint in question because the complainant did not persuade the ombudsman that any breach of Regulation 14(3) was material to their decision to purchase. The other decision referred to was upheld, because a breach of Regulation 14(3) was found to be material. So, both decisions have taken the same approach as I have but reached different outcomes – because the evidence in each case differed.

Here, I have accepted the possibility that both sales were in breach of Regulation 14(3) of the Timeshare Regulations. But I disagree with the PR's assertion that a breach of Regulation 14(3) automatically creates an unfair relationship.

The PR ought to be aware from dozens of ombudsman decisions (including the two it referred to) that our approach in these types of cases is to consider whether any breach of Regulation 14(3) is material to the customer's decision to purchase. And that an unfair relationship is only likely to have been created if the breach was material to that decision (that is, it affected what the customer did). I think that is a fair and reasonable approach considering relevant law and regulations, regulators' rules, guidance and standards, codes of practice and what I consider was good industry practice at the relevant time.

Conclusion

In conclusion, I do not think that the Lender acted unfairly or unreasonably when it dealt with the relevant Section 75 claims, and I am not persuaded that the Lender was party to credit relationships with Mr H under the Credit Agreements that were unfair to him for the purposes of Section 140A of the CCA – nor do I see any other reason why it would be fair or reasonable to direct the Lender to compensate him.

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 H to accept or reject my decision before 17 February 2026.

Phillip Lai-Fang
Ombudsman