

The complaint

Miss P and Mr Y'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 them under Section 140A of the Consumer Credit Act 1974 (as amended) (the 'CCA') and (2) not upholding their claim under Section 75 of the CCA.

What happened

Miss P and Mr Y purchased a Fractional Club membership from a third party timeshare provider (the 'Supplier') on 30 December 2018 (the 'Time of Sale'). They entered into an agreement (the 'Purchase Agreement') to buy a total of 1010 fractional points for £14,130.

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

Miss P and Mr Y paid for their Fractional Club membership by taking finance of £14,130 from the Lender (the 'Credit Agreement') Miss P and Mr Y subsequently paid off the finance on 5 June 2020.

Miss P and Mr Y – using a professional representative (the 'PR') – wrote to the Lender on 4 November 2021 (the 'Letter of Complaint') to raise a number of different concerns. As those concerns haven't changed since they were first raised, and as both sides are familiar with them, it isn't necessary to repeat them in detail here beyond the summary above.

When the Lender responded, it treated the case as a dispute, rather than a complaint. It replied on 7 January 2022, but did not uphold any of the grounds of the complaint.

Consequently, the PR raised this with the Lender on 5 July 2022, which then investigated the issue as a formal complaint and issued a final response on 30 August 2022. Once again, the Lender rejected the complaint on all its grounds.

The complaint was then referred to the Financial Ombudsman Service. It was assessed by an Investigator who, having considered the information on file, recommended that the complaint be upheld on its merits.

The Lender disagreed with the Investigator's assessment and asked for an Ombudsman's decision – which is why it was passed to me. I have reviewed and considered all the arguments and submissions made by PR and the Lender, including those made in response to our Investigator's view.

Having done so, I issued a provisional decision (the 'PD') dated 27 November 2025. In that decision, I said:

“ I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. And having done that, I do not agree with the Investigator and do not think this complaint should be upheld. Consequently, I think it's appropriate to give both parties the opportunity to comment before I issue my final decision.

However, before I explain why, I want to make it clear that my role as an Ombudsman is not to address every single point that has been made to date. Instead, it is to decide what is fair and reasonable in the circumstances of this complaint. So, if I have not commented on, or referred to, something that either party has said, that does not mean I have not considered it.

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

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

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

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

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

However, neither points 1 nor 2 strike me as misrepresentations even if such representations 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. And even if the Supplier's sales representatives went further and suggested that the share in question would increase in value, perhaps considerably so, that sounds like nothing more than a honestly held opinion as there isn't any accompanying evidence to persuade me that the relevant sales representative(s) said something that, while an opinion, amounted to a statement of fact that they did not hold or could not have reasonably held.

As for points 3 and 4, while it's possible that Fractional Club membership was misrepresented at the Time of Sale for one or both of those reasons, I don't think it's probable. They're given little to none of the colour or context necessary to demonstrating that the Supplier made false statements of existing fact and/or opinion. And as there isn't any other evidence on file to support the suggestion that Fractional Club membership was misrepresented for these reasons, I don't think it was.

So, while I recognise that Miss P and Mr Y - and the PR - have concerns about the way in which Fractional Club membership was sold by the Supplier, when looking at the claim under Section 75 of the CCA, I can only consider whether there was a factual and material misrepresentation by the Supplier. For the reasons I've set out above, I'm not persuaded that there was. And that means that I don't think that the Lender acted unreasonably or unfairly when it dealt with this particular Section 75 claim.

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

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

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

- 1. The standard of the Supplier's commercial conduct – which includes its sales and marketing practices at the Time of Sale along with any relevant training material;*
- 2. The provision of information by the Supplier at the Time of Sale, including the contractual documentation and disclaimers made by the Supplier;*
- 3. Evidence provided by both parties on what was likely to have been said and/or done at the Time of Sale;*
- 4. The inherent probabilities of the sale given its circumstances; and, when relevant*
- 5. Any existing unfairness from a related credit agreement.*

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

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

Miss P and Mr Y's complaint about the Lender being party to an unfair credit relationship was made for several reasons.

The PR says, for instance, that the right checks weren't carried out before the Lender lent to Miss P and Mr Y. 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 Miss P and Mr Y was actually unaffordable before also concluding that they lost out as a result and then consider whether the credit relationship with the Lender was unfair to them for this reason. I've seen evidence from the Lender that Miss P and Mr Y kept up to date with their loan payments until at least February 2024. Consequently, from the information provided, I am not satisfied that the lending was unaffordable for Miss P and Mr Y at the time they entered into the agreement.

Connected to this is the suggestion by the PR that the Credit Agreement was arranged by an unauthorised credit broker, the upshot of which is to suggest that the Lender wasn't permitted to enforce the Credit Agreement. Irrespective of the fact that it appears the broker did have the right authorisation at the Time of Sale, it looks to me like Miss P and Mr Y knew, amongst other things, how much they were borrowing and repaying each month, who they were borrowing from and that they were borrowing money to pay for Fractional Club membership. And as the lending doesn't look like it was unaffordable for them, even if the Credit Agreement was arranged by a broker that didn't have the necessary permission to do so (which I make no formal finding on), I can't see why that led to a financial loss for Miss P and Mr Y – such that I can say that the credit relationship in question was unfair on them as a result. And with that being the case, I'm not persuaded that it would be fair or reasonable to tell the Lender to compensate them, even if the loan wasn't arranged properly.

The PR also says that there was one or more unfair contract terms in the Purchase Agreement. But as I can't see that any such terms were operated unfairly against Miss P and Mr Y in practice, nor that any such terms led them to behave in a certain way to their detriment, I'm not persuaded that any of the terms governing Fractional Club membership are likely to have led to an unfairness that warrants a remedy.

I acknowledge that Miss P and Mr Y may have felt weary after a sales process that went on for a long time. But they say little about what was said and/or done by the Supplier during their sales presentation that made them feel as if they had no choice but to purchase Fractional Club membership when they simply did not want to. They were also given a 14-day cooling off period and they have not provided an explanation for why they did not cancel their membership during that time.

And with all of that being the case, there is insufficient evidence to demonstrate that that Miss P and Mr Y made the decision to purchase Fractional Club membership because their ability to exercise that choice was significantly impaired by pressure from the Supplier.

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

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

The Lender does not dispute, and I am satisfied, that Miss P and Mr Y's Fractional Club membership met the definition of a "timeshare contract" and was a "regulated contract" for the purposes of the Timeshare Regulations.

Regulation 14(3) of the Timeshare Regulations prohibited the Supplier from marketing or selling Fractional Club membership as an investment. This is what the provision said at the Time of Sale:

"A trader must not market or sell a proposed timeshare contract or long-term holiday product contract as an investment if the proposed contract would be a regulated contract."

But the PR says that the Supplier did exactly that at the Time of Sale – saying, in summary, that Miss P and Mr Y were told by the Supplier that Fractional Club membership was the type of investment that would only increase in value.

The term "investment" is not defined in the Timeshare Regulations. But for the purposes of this provisional decision, and by reference to the decided authorities, an investment is a transaction in which money or other property is laid out in the expectation or hope of financial gain or profit.

A share in the Allocated Property clearly constituted an investment as it offered Miss P and Mr Y 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 at this stage that the fact that Fractional Club membership included an investment element did not, itself, transgress the prohibition in Regulation 14(3). That provision prohibits the marketing and selling of a timeshare contract as an investment. It doesn't prohibit the mere existence of an investment element in a timeshare contract or prohibit the marketing and selling of such a timeshare contract per se.

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

To conclude, therefore, that Fractional Club membership was marketed or sold to Miss P and Mr Y 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 Fractional Club membership offered them the prospect of a financial gain (i.e., a profit) given the facts and circumstances of this complaint.

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

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

On the other hand, I acknowledge that the Supplier's sales process left open the possibility that the sales representative may have positioned Fractional Club membership as an investment. So, I accept that it's possible that Fractional Club membership was marketed and sold to Miss P and Mr Y as an investment in breach of Regulation 14(3).

However, whether or not 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 Time of Sale, I now need to consider what impact that breach had on the fairness of the credit relationship between Miss P and Mr Y and the Lender under the Credit Agreement and related Purchase Agreement as the case law on Section 140A makes it clear that regulatory breaches do not automatically create unfairness for the purposes of that provision. Such breaches and their consequences (if there are any) must be considered in the round, rather than in a narrow or technical way.

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

But on my reading of the evidence before me, the prospect of a financial gain from Fractional Club membership was not an important and motivating factor when they decided to go ahead with their purchase. Miss P and Mr Y provided a statement to PR, which was then forwarded to us. This was undated, but the PR told us that it had been completed on 16 September 2020.

The statement went into great detail about the process by which Miss P and Mr Y had come to purchase their membership, the difficulties they had found in operating the membership and the considerable lengths they had gone to after the purchase to liaise with the supplier to try to resolve these difficulties. The statement, however, contained very little information

about the role that the investment element of the membership made in their decision to complete the purchase. The statement said:

“...properties are being sold now and property prices are only going to go up, we were provided with an estimated figure between 6 – 9 thousand pounds when for our small share when it was sold. A way of saying thank you to their members they said.”

And with that being the case, I'm not persuaded that I can give those written recollections the weight necessary to finding that the credit relationship in question was unfair for reasons relating to a breach of the relevant prohibition.

That doesn't mean Miss P and Mr Y were not interested in a share in the Allocated Property. After all, that wouldn't be surprising given the nature of the product at the centre of this complaint. So, as Miss P and Mr Y haven't persuaded me that their purchase was motivated by their share in the Allocated Property and the possibility of a profit, I don't think a breach of Regulation 14(3) by the Supplier was likely to have been material to the decision Miss P and Mr Y ultimately made. However, as set out above, if they have anything further they wish for me to consider on this point, they can let me know in response to this decision. But based on their own memories, I simply can't say that any positioning of Fractional Club membership by the Supplier as an investment was a factor in their purchasing decision.

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 Miss P and Mr Y'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 they would have pressed ahead with their purchase whether or not there had been a breach of Regulation 14(3). And for that reason, I do not think the credit relationship between Miss P and Mr Y and the Lender was unfair to them even if the Supplier had breached Regulation 14(3).

The Supplier's liquidation procedure and the applicability of Spanish Law on the Credit Agreement

The PR has indicated that any amounts that may be awarded in compensation against the Supplier as a result of action in a Spanish Court may not be recoverable owing to the liquidation of the Supplier's sales companies. I am unconvinced that the liquidation of these companies has any bearing on the merits of the complaint against the Lender.

*Furthermore, I can't see that the Lender has been party to any court proceedings in Spain. Given that, and also noting that the Purchase Agreement is governed by English law, it isn't at all clear to me that Spanish law would be held relevant if the validity of the Purchase Agreement were litigated between its parties and the Lender in an English court. For example, in *Diamond Resorts Europe and Others (Case C-632/21)*, the European Court of Justice ruled that, because the claimant lived in England and the timeshare contract governed by English law, it was English law that applied, not Spanish.*

Overall, therefore, in the absence of a successful English court ruling on a timeshare case paid for using a point-of-sale loan on similar facts to this complaint, and given the facts and circumstances of this complaint, I'm not persuaded that it would be fair or reasonable to consider the liquidation of any of the Supplier's sales companies is relevant to this complaint.

Conclusion

In conclusion, given the facts and circumstances of this complaint, I do not think that the Lender acted unfairly or unreasonably when it dealt with Miss P & Mr Y's Section 75 claim, and I am not persuaded that the Lender was party to a credit relationship with them under the Credit Agreement that was unfair to them 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 them."

The Lender responded to the provisional decision and accepted it. The PR disagreed and asked for a final decision to be made.

Following my provisional decision, I also communicated how I was not persuaded that Miss P and Mr Y's credit relationship with the Lender was unfair to them for reasons relating to the commission arrangements between it and the Supplier. Neither party responded nor sought to challenge my conclusions on this point.

Having received the relevant responses from both parties, I'm now finalising my 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, 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 decided – and why

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

I've 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.

The PR's further comments in response to the PD in the main relate to the issue of whether the credit relationship between Miss P and Mr Y and the Lender was unfair. In particular, the PR has provided further comments in relation to whether the membership was sold to Miss P and Mr Y as an investment at the Time of Sale. They also argued for the first time that the payment of a commission by the Lender to the Supplier led to an unfair credit relationship. The PR has also continued to argue that the Purchase Agreement is unlawful under Spanish law and therefore it should be treated as rescinded.

As outlined in my provisional decision, the 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 the 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

As I explained in my provisional decision, there is little mention of the investment element of the fractional membership in Miss P and Mr Y's statement. So, on balance, I wasn't persuaded that the evidence suggested that they purchased Fractional Club membership in whole or in part down to any breach of Regulation 14(3).

So, ultimately, I remain unpersuaded that any breach of Regulation 14(3) was material to Miss P and Mr Y's purchasing decisions.

The PR also said that in the judgment handed down in *Shawbrook & BPF v FOS*, it was not challenged that the product in question was marketed and sold as an investment. But, as I explained in my provisional decision, the Timeshare Regulations did not ban products such as the Fractional Club. They just regulated how such products were marketed and sold. And the judgment referred to did not make a blanket finding that all such products were mis-sold in the way the PR appears to be suggesting. Any complaint needs to be considered in the light of its specific circumstances.

So, as I said before, even if the Supplier had marketed or sold the membership as an investment in breach of Regulation 14(3) (which I still make no finding on here), I'm not persuaded Miss P and Mr Y's decision to make the purchase was motivated by the prospect of a financial gain. So, I still don't think the credit relationship between Miss P and Mr Y and

the Lender were unfair to them for this reason.

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

The PR said in response to my provisional decision 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 Miss P and Mr Y in arguing that their credit relationship with the Lender was unfair to them for reasons relating to commission given the facts and circumstances of this complaint.

I haven't seen anything to suggest that the Lender and Supplier were tied to one another contractually or commercially in a way that wasn't properly disclosed to Miss P and Mr Y, nor have I seen anything that persuades me that the commission arrangement between them gave the Supplier a choice over the interest rate that led Miss P and Mr Y into a credit agreement that cost disproportionately more than it otherwise could have.

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

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

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 Miss P and Mr Y entered into wasn't high. At £706.50, it was only 5.00% of the amount borrowed and even less than that (4.63%) as a proportion of the charge for credit. So, had they 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 they either wouldn't have understood that or would have otherwise questioned the size of the payment at that time. After all, Miss P and Mr Y wanted Fractional Club membership and had no obvious means of their own to pay for it. And at such a low level, the impact of commission on the cost of the credit they needed for a timeshare they wanted doesn't strike me as disproportionate. So, I think they would still have taken out the loan to fund their purchase at the Time of Sale had the amount of commission been disclosed.

What's more, based on what I've seen so far, the Supplier's role as a credit broker wasn't a separate service and distinct from its role as the seller of timeshares. It was simply a means to an end in the Supplier's overall pursuit of a successful timeshare sale. I can't see that the Supplier gave an undertaking – either expressly or impliedly – to put to one side its commercial interests in pursuit of that goal when arranging the Credit Agreement. And as it wasn't acting as an agent of Miss P and Mr Y but as the supplier of contractual rights they 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 them when arranging the Credit Agreement and thus a fiduciary duty.

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

Commission: The Alternative Grounds of Complaint

While I've found that Mr and Mrs P's credit relationships with the Lender were not unfair to them 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 and Mrs P's complaint about unfair credit relationships. 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 and Mrs P (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 and Mrs P 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 them. And while it's possible that the Lender failed to follow the regulatory guidance in place at the Time of Sales 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 they would still have taken out the loan to fund their purchases at the Time of Sales had there been more adequate disclosure of the commission arrangements that applied at that time.

Other points

Here, the PR has asked us to determine the rights and obligations of the Lender based on the outcome of a court case in Spain. In my provisional decision, I said that in the absence of a judgment in an English jurisdiction on this issue, I was not persuaded it was fair and reasonable to conclude the loan agreement was able to be set aside. I remain of this view for the following reasons:

- The Lender wasn't a party to the proceedings the PR has referred to, so its' rights under the Credit Agreement have not been determined.
- I still think that the Purchase Agreement are governed by English law for the reasons already set out in my provisional decision. The PR has pointed to a different decision of the European Court of Justice that points the other way. But in the absence of any authorities under English law, I'm still not persuaded that (1) the Purchase Agreement, properly governed by English law, could be avoided following the Spanish Judgment to which the PR refers and (2) that the Credit Agreement were also something that could be successfully avoided.
- And lastly, in any event, the PR has not provided any arguments as to why the relevant agreement could be set aside given Miss P and Mr Y's use of the membership.

So again, I'm still not persuaded that it would be fair or reasonable to uphold the complaint for this reason.

Conclusion

In conclusion, given the facts and circumstances of this complaint, I do not think that the Lender acted unfairly or unreasonably when it dealt with Miss P and Mr Y's Section 75 claim, and I am not persuaded that the Lender was party to a credit relationship with them under the Credit Agreement that was unfair to them 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 them.

My final decision

For the reasons set out above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss P and Mr Y to accept or reject my decision before 6 March 2026.

Bill Catchpole
Ombudsman