

The complaint

Mr B's complaint is, in essence, that Tandem Bank Limited (the 'Lender') acted unfairly and unreasonably by (1) being party to unfair credit relationships with him under Section 140A of the Consumer Credit Act 1974 (as amended) (the 'CCA') and (2) deciding against paying claims under Section 75 of the CCA.

What happened

Introductory issues

The products at the centre of this complaint are Mr and Mrs B's memberships of two timeshares which I will refer to as the 'Fractional Club' and the 'Signature Collection' memberships. We know these were purchased on 13 August 2018 and 12 August 2019 respectively. From the information we have, it seems only Mr B's name was used to obtain the two loans used to help fund these two purchases. This means I'll periodically be referring only to Mr B in this decision, although I do understand that Mrs B was present during these purchases too.

Also, as I'll explain a little more about later, because the Lender was the same on both the 2018 and 2019 purchases, and the Credit Agreements are related agreements for the purposes of the Consumer Credit Act¹, this means I'll be considering both sales events².

Finally, I think it's also helpful to explain that whilst the financing relevant to Mr B's complaint was originally provided by a business with a different name, the two loans he took out were subsequently acquired by the Lender I've mentioned above. So, for simplicity and consistency, when I refer to the Lender in this decision, it is "Tandem Bank Limited" which is now the responsible business.

Overview

Between 2017 – 2019 Mr and Mrs B bought three memberships from a timeshare provider (the 'Supplier'). They first bought a form of 'Trial' membership in or around August 2017 after what Mr B describes as a UK-based timeshare sales event. As well as buying Trial membership, he and Mrs B were provided with a free holiday which they booked for the following year.

Whilst on that holiday they traded up to a second timeshare product, on 13 August 2018. This was a Fractional Club membership, a type of product which meant it provided holidaying rights based on a points system; they bought 910 points on this occasion. But the Fractional membership also included a share in the net sale proceeds of a property named on the Purchase Agreement (the 'Allocated Property') after the membership term ended. In this case this was in 2036. The total cost of the Fractional Club membership was £12,421 but they traded-in their existing Trial membership, and some money was still owed on finance from the Trial. In total, Mr B borrowed £15,582 from the Lender to finance this purchase, payable over 120 months.

¹ Section 140A of the Consumer Credit Act 1974 (as amended)

² A 'Trial' membership Mr B's took out in 2017 used financing from a different Lender.

Mr and Mrs B were given another free holiday as a consequence of the 2018 purchase which they booked for August 2019. Whilst on that holiday they purchased the Signature Collection timeshare product and another 850 points. This was purchased on 12 August 2019. The Signature Collection had some similar features to the Fractional Club in that it also included a share in the net sale proceeds of a property named on the Purchase Agreement after the membership term ended. And it too had a long-term contract, which Mr B says was 16 years. But the Signature Collection was considered an upgraded product. Features included, but were not limited to, a higher standard of accommodation and the exclusive use of the Allocated Property. In buying this upgraded version Mr B ended up taking out a new loan of £25,065 which was payable over 180 months. The total payable after interest was £52,122.

Mr B used a professional representative (“PR”) to bring his complaint. It wrote to the Lender on 3 May 2023 to raise a number of different concerns. The Lender rejected the complaint on every ground. It basically said contemporaneous notes taken by the Supplier at the time indicated that Mr B stated his intentions for the first purchase were based on his and Mrs B’s future holidaying aspirations and enjoyment. It also said the second purchase he made was specifically purposed to add more points and to have the facility to holiday in the Supplier’s suite of accommodations at around the time of his birthday, but every two years.

Mr B didn’t accept the Lender’s rejection of his complaint, and he referred it to the Financial Ombudsman Service via his PR. It was assessed by one of our investigators who also didn’t think we should uphold it. Mr B disagreed with the investigator’s assessment and has asked for an ombudsman’s decision – which is why it was passed to me.

I issued a provisional decision (PD) about this case on 5 November 2025 in which I comprehensively set out my reasoning for not upholding the complaint. However, I invited the parties to respond with any further information or evidence they wanted to submit. Further to this, on 29 January 2026 I issued another communication (a ‘side letter’) dealing with the issue of commission paid to the Supplier by the Lender.

I’ve now had a response from Mr B’s PR which basically disagrees with my PD. I have read everything said on his behalf with great care. But as I said before, 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. Essentially, there’s no new information or evidence submitted in response to my PD, but rather, the response consists of a re-submission and re-positioning of certain arguments I’d already seen (and fully considered in detail before issuing my PD).

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.

Having done this, I am not upholding this complaint. This is my final decision.

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. This affords consumers ("debtors") a right of recourse against lenders which provided 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 Mr and Mrs B were:

1. Told that they had purchased an investment that would considerably appreciate in value when that was not true.
2. Told that they would own a share in a property that would increase in value during the membership term when that was not true.
3. Told that they could sell back the membership(s) easily to the Supplier or 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 when that was not true.

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. 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 enough 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 have held.

As for points 3 and 4, while it's possible that the Fractional Club membership was misrepresented for one or both of those reasons, I don't think it's probable. I think it's also notable that Mr B himself makes no references at all to these alleged misrepresentations when he added a client personal statement to his complaint. These allegations also lack the necessary detail and context to show that the Supplier made false statements of existing fact or misleading opinions. So, since there's no other supporting evidence on file to back up the suggestion that the membership was misrepresented in these ways, I don't think it was.

While I therefore recognise that the PR has concerns about the way in which these memberships were 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. So, this means that I don't think that the Lender acted unreasonably or unfairly when it dealt with the particular Section 75 claim(s).

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 Times 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 relationships between Mr B 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 Times of Sale along with any relevant training material;
2. The provision of information by the Supplier at the Times 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 Times of Sale;
4. The inherent probabilities of the sale given its circumstances; and when relevant, any existing unfairness from a related credit agreement.
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 Mr B and the Lender.

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

Mr B's complaint about the Lender being party to an unfair credit relationship was made for several reasons. However, the PR only refers to the 2019 sale in its Letter of Complaint, while Mr B himself refers to all his purchases. The main reason for this anomaly is that, in

my view, the Letter of Complaint from the PR is a wholly generic one, which is set out in the same way I've now seen in many other such complaints from this same PR. As such, I'm not persuaded it's an accurate account of what Mr B himself articulates – I explain more about the major differences later.

The PR says, for instance, that the right checks weren't carried out before the Lender lent to Mr B. But I haven't seen anything meaningful to persuade me this was the case in this complaint given its circumstances. 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 B 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 for this reason. However, from the very limited information provided in this respect, I am not satisfied that the lending was unaffordable for Mr B on either the 2018 or 2019 occasion.

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. However, it looks to me like Mr B knew, amongst other things, how much he was borrowing on both occasions and repaying each month. He knew who he was borrowing from and that he was borrowing money to pay for Fractional Club membership and then the Signature Collection; Mr B fully explains this in his own client personal statement. As the lending doesn't look like it was unaffordable for him, even if the Credit Agreement was arranged by a broker that didn't have the necessary permission to do so, I can't see why that led to him suffering a financial loss – such that I can say that the credit relationship in question was unfair as a result.

Mr B also alleges that he and Mrs B were subjected to repeated and oppressive pressure at the point-of-sale meetings on each of the 2018 and 2019 occasions. I won't repeat all Mr B's comments, but I do understand the points and allegations he makes which relate to long meetings and an alleged 'hard sell environment' on each occasion. He is also categorical that he was not told of any cooling-off period, the implication being that he couldn't 'back out' even after being pressured to buy in the way alleged.

However, I think it's first relevant to look at all the circumstances in which Mr and Mrs B came to these respective sales events. We know, for example, that they had first attended a type of sales seminar in the UK in 2017 where they bought into a type of Trial timeshare membership. Mr B describes this as being an oppressive sales environment and he then repeats largely similar allegations as regards the next two resort-based sales, which were in Spain in 2018 and 2019.

The point I'm therefore making here is that I think it's relevant that Mr and Mrs B attended the two sales events they are complaining about—in 2018 and 2019—against this backdrop. As such, I do think it's fair and reasonable to have expected them to have attended the 2018 event armed with the information and knowledge of what it was about and what to expect. That's because Mr B says their experience of the Trial membership purchase was unpleasant and they were "*reluctant*" purchasers. But Mr B says the 2018 Fractional membership purchase was effectively carried out under the same circumstances which involved considerable pressure. Next, I think their attendance at the 2019 event would also tend, by definition, to mean they must have been armed with even more awareness of what to expect, having by then attended what they describe as *two* deeply unpleasant sales events.

I've carefully considered the likelihood of this as what Mr B is effectively describing is that they returned to make a purchase on each occasion, despite having been pressured into buying a timeshare they didn't want, the time before. From a starting position, I think these

allegations of pressure are therefore unpersuasive. It seems unlikely to me that they would continue purchasing from the same Supplier in these circumstances. Their recollections also appear to me to have been written between at least 3½ and 4½ years after the respective sales.

Nevertheless, I do still acknowledge what Mr B has to say about these sales events in his own client personal statement. I acknowledge also, that it's possible he and Mrs B may have felt weary after a sales process which they imply may have gone on for a long time, for example. But whilst I do understand what they describe, they say relatively little about what was actually said or done by the Supplier during the sales presentation which made them apparently feel as if they had *no choice* but to purchase these memberships, when they simply didn't want to. I think it's also highly relevant to say that they were given a 14-day cooling off period on each occasion and they have not provided a credible explanation for why they did not cancel their membership during that time.

Mr B provides what appears a very clear recollection of never being told about the cooling off time(s). But this too causes me to substantially doubt his recollections from that period. I accept remembering the events of several years ago will be difficult for him, but I've seen documents presented to them—and indeed signed by them—which clearly show this simply isn't right. The evidence is strong that they were given a 'Right to Withdraw in 14 days' option in both cases.

So, with all of that being the case, I think there is insufficient evidence to demonstrate that they made the decision to purchase these memberships because their ability to exercise that choice was significantly and seriously impaired by pressure from the Supplier. I don't think all the above facts support this.

It was also said in the PR's Letter of Complaint that Mr and Mrs B were made "*to believe that they would have access to the holiday's [sic] apartment at all times around the year*". But I've noted that Mr B makes only very limited comments about this subject area in his own statement, and this relates to being unable to book a resort due to maintenance being carried out. So, it's not clear to me where this allegation comes from. It's also not entirely clear whether the PR is saying they thought they would be able to stay at the Allocated Property whenever they wanted, or they thought the availability of general accommodation using their holiday points more broadly, was guaranteed.

However, I think it's reasonable for me to say that 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 Mr and Mrs B were given stated that the availability of holidays was subject to demand. I also find it unlikely that the Supplier would have made promises of the type suggested in the Letter of Complaint, and whilst I accept it's obviously possible that Mr and Mrs B may not have been able to take certain holidays at certain times, I have not seen enough to persuade me that this rendered the overall credit relationship with the Lender unfair.

I therefore don't think that Mr B's credit relationship(s) with the Lender was rendered unfair to him under Section 140A for any of the reasons above. But there is another reason, perhaps the main reason, why the PR says the credit relationship with the Lender was unfair to them. And that's the suggestion explicitly from the PR that Mr and Mrs B's membership(s) was / were 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 Mr B's 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 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 – saying, in summary, that Mr and Mrs B were told by the Supplier that Fractional Club membership was the type of investment that would only increase in value. Allegations of this nature are contained within the PR's Letter of Complaint.

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

A share in the Allocated Property clearly constituted an investment as it offered Mr B 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 either membership was marketed or sold to Mr B 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 as an investment, i.e. told them or led them to believe that their 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 (and then Signature) Club 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.

I am familiar with the sales process and documentation likely used by the Supplier at the time of both sales. On the one hand, it is clear that the Supplier made efforts to avoid specifically describing membership of the Fractional Club and Signature Collection as 'investments' or quantifying to prospective purchasers, such as Mr B, the financial value of the share(s) 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 also possible that Fractional Club membership was marketed and sold to Mr B 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 said 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 that breach could have had on the fairness of the credit relationship(s) between Mr B and the Lender under the relevant Credit Agreements and related Purchase Agreements as the case law on Section 140A makes it clear that regulatory breaches do not automatically create unfairness for the purposes of that provision. Such breaches and their consequences (if there are any) must be considered in the round, rather than in a narrow or technical way.

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

To help me decide this point, I've considered the allegations as put forward by the PR. I have also reverted back to Mr B's client personal statement and thought carefully about what he himself has to say. It's also fair and reasonable that I consider all the wider circumstances in which this sale took place.

In so far as any evidence of their being investment related marketing carried out by the Supplier during the sale is concerned, the PR says, *"my client was told that they had purchased an investment and that his timeshare would considerably appreciate in value"*. The PR also says Mr B was told, he would get a *"considerable return on [the] investment"*.

However, there was also no further or descriptive detail underpinning these allegations within the Letter of Complaint setting out exactly what was said and by whom. Importantly, I think I should draw attention to Mr B's own statement as I think there are some meaningful differences between that statement and the PR's Letter of Complaint.

I say this because there are, for example, several specific allegations raised by the PR which are not reflected at all in what Mr B has to say in his own statement. The most prominent example is that Mr B makes no such comments about the alleged marketing of either the 2018 or 2019 sale as being an investment that *"would considerably appreciate in value"*. The comments in his statement focus almost entirely on the sales techniques allegedly being designed to get them to sign up 'on the day' – the issues I've already dealt with above.

I also return briefly to the circumstances that brought them to attending the 2018 and 2019 sales events. These show they were first existing Trial members upgrading to Fractional Club membership - then Fractional members purchasing and upgraded Signature Collection offer at a time of year Mr B specifically wanted, to be on holiday around the time of his birthday.

Given this, and all the information and evidence that I've seen in this complaint, I think it's likely Mr and Mrs B were influenced much more by the promised holidaying experiences on offer from these products, rather than any investment related matters. I find the series of purchases they made show strong circumstantial evidence of this. Each 'step-up' in the process represented an incremental and increasing level of holiday product. The first step-up meant Mr and Mrs B purchased a Fractional Club membership with 910 points. And the second step-up added holiday points and the promise of superior accommodation and

services. The Lender says the notes from the time say that Mr B was interested in purchasing availability around his birthday week, which I can see this Signature Collection week was close to.

Mr B also says he was told *“the signature membership would run simultaneous to the fractional membership thus giving us more points if we wanted to trade in our points or we could use our 1 week in our signature apartment, the signature membership was sold as an exclusive member only area”*. So again, I think these circumstances and comments point much more strongly to consumers who were progressing and enhancing their holiday options as time went by. Everything I’ve seen in this complaint points clearly to Mr and Mrs B being substantially encouraged and motivated by the promised holidaying offer(s).

For the 2019 sale Mr B says nothing at all about the timeshare being marketed as an investment. For the 2018 sale, he says, *“they told us that the property would make money and we would receive around 1.93% back”*.

However, I don’t think these brief and limited comments support an allegation that prohibited marketing caused Mr B to buy either of the two timeshares in question here. What Mr B mainly describes above is limited to the earlier sale only, and in any event, his comments seem to me to be largely restricted to a straightforward *description* of the Fractional product he was buying at that time and how it worked. What I mean by this is that the Fractional Club product *did* include a share in the net sale proceeds of a property named on the Purchase Agreement; that was the nature and make-up of the product, and in Mr B’s case it was 1.93%. So, in my view, his comments only reflect the contract into which Mr B was entering at that time.

His brief words do, of course, mention *“make money.”* But I need to consider these limited remarks in context and alongside his other much more comprehensive comments about the two sales. Indeed, it’s also right that I take account of all the other circumstances and evidence apparent in his case. And I’ve set out above how all these other things point much more strongly to the two purchases being based on a desire for personal holiday enjoyment and flexibility, rather than any long-term investment(s) realisable in the 2030s.

Weighing all this up, and in the specific circumstances of this particular case, I do not think the prospect of a financial gain from either the 2018 or 2019 memberships were important and motivating factors when Mr and Mrs B decided to go ahead with the purchases. Mr B’s own statement doesn’t actually refer to any issues relating to investing for gain, probably because the fundamental allegation is one of a pressured sale and not having an option to decline. Overall, I think there’s much more persuasive evidence that their purchasing rationale lay elsewhere, supported as this is by their progression through the suite of timeshare products between 2017 - 2019, the opportunity to holiday around Mr B’s birthday, and the lack of any meaningful allegations that investment related marketing was something they factored into their purchasing calculations.

Of course, this doesn’t mean they weren’t interested in a share in the Allocated Property. After all, that wouldn’t be surprising given the nature of the product at the centre of this complaint. But I’m afraid Mr B doesn’t persuade me that their purchases were motivated by their share in the Allocated Properties and the possibility of a profit. So, I don’t think a breach of Regulation 14(3) by the Supplier, even if there was one, was likely to have been material to the decision they ultimately made.

As I said earlier whether or not there was a breach of the relevant prohibition by the Supplier is not ultimately determinative of the outcome in this complaint. That’s because everything I’ve comprehensively explained above leads me to think the evidence shows it’s much more likely that Mr B would have still gone ahead and taken out the loans, whether or not the

sales had been presented to him as an investment opportunity in breach of Regulation 14(3) of the Timeshare Regulations.

I am very sorry to disappoint them, but I am not persuaded that their decision to purchase either membership was motivated here by the prospect of a financial gain (i.e., a profit). I don't think the evidence supports this. I think the evidence is much more persuasive in this case that they would have pressed ahead with their purchases whether or not there had been a breach of Regulation 14(3).

On this basis, I therefore don't think the credit relationships between Mr B and Tandem Bank Limited were unfair.

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

Mr B says he was not given sufficient information at the Times of Sale by the Supplier about some of the ongoing costs of either membership. The PR also says that the contractual terms governing the ongoing costs of membership and the consequences of not meeting those costs were unfair contract terms.

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, generally, it is also possible that the Supplier did not give Mr B sufficient information, in good time, on the various charges he and Mrs B could have been subject to as Fractional Club 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.

As for the PR's argument that there were one or more unfair contract terms in the Purchase Agreement, I can't see that any such terms were operated unfairly in practice, nor that any such terms led them to behave in a certain way to their detriment. And with that being the case, I'm not persuaded that any of the terms governing these memberships are likely to have led to an unfairness that warrants a remedy.

Commission

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 and Mrs B in arguing that their credit relationship with the Lender was or were 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 Mr and Mrs B, nor have I seen anything that persuades me that the commission arrangements between them gave the Supplier a choice over the interest rates that led Mr and Mrs B into credit agreements that cost disproportionately more than they 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 Times 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 Times of Sale, it is for the reasons set out below that I don't think any such failures were themselves a reason to find one or more of the credit relationships in question unfair to Mr and Mrs B.

In stark contrast to the facts in Mr Johnson's case, the amount of commission paid by the Lender to the Supplier for arranging Mr B's Credit Agreements wasn't high in either case. These were 2.49% and 2.5% of the amounts borrowed for the 2018 and 2019 loans (and even smaller percentages as proportions of the charge(s) for credit - which is the calculation the Supreme Court used).

So, had they known that the Supplier was going to be paid a flat rate of commission at those levels, I'm not persuaded that they either wouldn't have understood that or would have otherwise questioned the size of the payments at that time. After all, Mr and Mrs B wanted the memberships and had no obvious means of their own to pay for them. And at such a level, the impact of commission on the cost of the credit they needed for timeshares they wanted doesn't strike me as disproportionate. So, I think they would still have taken out the loans to fund their purchases 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 successful timeshare sales. 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. As it wasn't acting as an agent of Mr and Mrs B but as the supplier of contractual rights they 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 them when arranging the Credit Agreements 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 relationships unfair to Mr and Mrs B.

Commission: The Alternative Grounds of Complaint

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

The first ground relates to whether the Lender is liable for the dishonest assistance of a breach of fiduciary duty by the Supplier because it took a payment of commission from the Lender without telling Mr and Mrs B (i.e., secretly). And the second relates to the Lender's compliance with the regulatory guidance in place 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 B 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. And while it's possible that the Lender failed to follow the regulatory guidance in place 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 loans to fund the purchases had there been more adequate disclosure of the commission arrangements that applied at that time.

Given the facts and circumstances of this complaint, I do not think that the Lender acted unfairly or unreasonably when it dealt with Mr and Mrs B's Section 75 claim(s).

Wider responses to my PD

In its response to my PD, the PR has reasserted its view that the Supplier marketed the membership to Mr and Mrs B as an investment and that this was a motivating factor in their decision.

In my PD I explained the reasons why I didn't think any breach of Regulation 14(3) had led Mr and Mrs B to proceed with their purchase(s). In short, I was not, and am still not, persuaded that their decision was motivated by the prospect of a financial gain (i.e., a profit). In reaching that view, I took into account the testimony given by Mr and Mrs B in the course of their complaint. I recognise the PR has interpreted Mr and Mrs B's testimony differently to how I have, and I have carefully considered its further comments. Ultimately though, they have not led me to a different conclusion.

The PR says that I have detracted from the judgment in *Shawbrook & BPF v FOS*³ and the case law that contributed to it, by requiring these consumers to have been motivated by the investment element in order to uphold the complaint. But as I say, I did not make such a finding. I said that, in my view, they were motivated by the holidaying and accommodation options offered by the Supplier – and this was a factor in my overall conclusion which is fully explained above. They would have pressed ahead with the purchase of the membership even if there had been a breach of Regulation 14(3).

So, for the reasons I have already set out, I still do not think that any breach of Regulation 14(3), if indeed there was one, was material to their decision to purchase this membership.

Conclusion

As I indicated at the start of this decision, I have fully considered both these loans, the fact the first credit agreement was consolidated by the second, and whether this led to any ongoing unfairness to Mr B.

But given the facts and circumstances of this complaint, I do not think that the Lender acted unfairly or unreasonably when it dealt with Mr B's Section 75 claim(s), and I am not persuaded that the Lender was party to credit relationship(s) with him under the Credit Agreement(s) that was unfair to him for the purposes of Section 140A of the CCA.

Having taken everything into account, I see no other reason why it would be fair or reasonable to direct the Lender to compensate him.

My final decision

I do not uphold this complaint.

I do not require Tandem Bank Limited to do anything more.

³ R (on the application of Shawbrook Bank Ltd) v Financial Ombudsman Service Ltd and R (on the application of Clydesdale Financial Services Ltd (t/a Barclays Partner Finance)) v Financial Ombudsman Service [2023] EWHC 1069 (Admin) ('Shawbrook & BPF v FOS').

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 19 March 2026.

Michael Campbell
Ombudsman