DRN-6095284

The complaint

Mrs M's 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 unfair credit relationships with her 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

Mrs M and her husband, Mr M, were members of a timeshare provider (the 'Supplier') – having purchased a number of products from it over time. But the product at the centre of this complaint is their membership of a timeshare that I'll call the 'Fractional Club' and 'Signature Collection' respectively – points in which Mrs and Mr M purchased on the dates below:

- 1,480 fractional points on 13 December 2016 for £22,454 ('Purchase Agreement 1', after trading in their previous trial membership they ended up paying £18,459 for their Fractional Club membership)
- 2,200 Signature points on 11 March 2018 for £37,117. ('Purchase Agreement 2', after trading in a previous membership, they ended up paying £15,927 for their Signature Collection membership)

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

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

Both Fractional Club and Signature Collection membership were asset backed – which meant it gave Mrs and Mr M more than just holiday rights. It also included a share in the net sale proceeds of a property named on the relevant purchase agreement (which I'll refer to as the 'Allocated Property 1 and 2' or, when appropriate, the 'Allocated Properties') after their membership term ends.

Mrs and Mr M paid for their fractional and Signature points by taking the following amounts of finance of from the Lender in Mrs M's name only:

- £22,043 on 13 December 2016 ('Credit Agreement 1', this loan also consolidated the outstanding balance of their previous loan)
- £15,927 on 11 March 2018 ('Credit Agreement 2')

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

Mrs M – using a professional representative – wrote to the Lender on 14 July 2020 to raise a number of different concerns. The Lender wasn't able to provide a final response to the complaint within the eight weeks required by the regulator.

So, that professional representative then referred the complaint to the Financial Ombudsman

Service. Later, in early 2023, Mrs M engaged a new professional representative (the 'PR'), who also made a complaint to the Lender to raise largely the same concerns (the 'Letter of Complaint'). As those concerns haven't changed since they were first raised, and as both sides are familiar with them, it isn't necessary to repeat them in detail here beyond the summary above.

The complaint was assessed by an Investigator who, having considered the information on file, rejected the complaint on its merits.

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

I considered the matter and issued a provisional decision (the 'PD') dated 30 December 2025. In that decision, I said:

"***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") 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 and/or Signature Collection membership had been misrepresented by the Supplier at the Times of Sale because Mrs and Mr M were:

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 and/or Signature Collection 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 and/or Signature Collection membership were 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 and/or Signature Collection membership were misrepresented for these reasons, I don't think it was.

So, while I recognise that Mrs M and the PR have concerns about the way in which Fractional Club 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 particular Section 75 claim.

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

I've already explained why I'm not persuaded that Fractional Club or Signature Collection 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 Mrs M 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 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. *The commission arrangements between the Lender and the Supplier at the Times 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 Times of Sale;*
5. *The inherent probabilities of the sale given its circumstances; and, when relevant*
6. *Any existing unfairness from a related credit agreement.*

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

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

Mrs M's complaint about the Lender being party to unfair credit relationships was made for several reasons.

The PR says, for instance, that the right checks weren't carried out before the Lender lent to Mrs M. 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 Mrs M was actually unaffordable before also concluding that she lost out as a result and then consider whether the credit relationships with the Lender were unfair to

her for this reason. But from the information provided, I am not satisfied that the lending was unaffordable for Mrs M.

Connected to this is the suggestion by the PR that the Credit Agreements were arranged by an unauthorised credit broker, the upshot of which is to suggest that the Lender wasn't permitted to enforce the Credit Agreements. However, it looks to me like Mrs M knew, amongst other things, how much she was borrowing and repaying each month, who she was borrowing from and that she was borrowing money to pay for Fractional Club and Signature Collection membership. And as none of the lending looks like it was unaffordable for her, even if the one or more of the Credit Agreements were 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 Mrs M's financial loss – such that I can say that the credit relationships in question were unfair on her 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 her, even if the loans weren't arranged properly.

The PR also says that there was one or more unfair contract terms in the Purchase Agreements. But as I can't see that any such terms were operated unfairly against Mrs and Mr M 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 or Signature Collection membership are likely to have led to an unfairness that warrants a remedy.

Overall, therefore, I don't think that Mrs M's credit relationships with the Lender were rendered unfair to her under Section 140A for any of the reasons above. But there is another reason, perhaps the main reason, why the PR says the credit relationships with the Lender was unfair to her. And that's the suggestion that the Fractional Club and Signature Collection membership 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 Mrs and Mr M's Fractional Club and Signature Collection memberships both met the definition of a "timeshare contract" and were 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 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 – saying, in summary, that Mrs and Mr M were told by the Supplier that Fractional Club and Signature Collection membership were 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.

Shares in the Allocated Properties clearly constituted investments as they offered Mrs and Mr M 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 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 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 or Signature Collection. They just regulated how such products were marketed and sold.

To conclude, therefore, that Fractional Club and Signature Collection membership were marketed or sold to Mrs and Mr M 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 and Signature Collection 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 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, it is clear that the Supplier made efforts to avoid specifically describing membership of the Fractional Club and Signature Collection as an 'investment' or quantifying to prospective purchasers, such as Mrs and Mr M, the financial value of their share in the net sales proceeds of the Allocated Properties 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 and Signature Collection membership as an investment. So, I accept that it's equally possible that Fractional Club and/or Signature Collection membership was marketed and sold to Mr and Mr M 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.

Were the credit relationships 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 Mrs M and the Lender under the 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 credit relationships between Mrs M and the Lender that were unfair to her and warranted relief as a result, whether the Supplier's breach of Regulation 14(3) led her and Mr M to enter into the Purchase Agreements and Mrs M to enter into the Credit Agreements is an important consideration.

The PR didn't provide any evidence to support this particular allegation when the complaint was first referred to our Service. But, in August 2023, they then submitted a witness statement from Mrs and Mr M. This isn't signed or dated but the PR said it had been drafted

in December 2022. In this statement, after describing their previous purchase, Mrs and Mr M have said the following about the Time of Sale 1 (their purchase of Fractional Club membership):

We went to Tenerife to use our free week certificate. We were again invited to a breakfast presentation.

We were obviously showing signs that we may not agree, as the person called in her manager to come and talk to us. Perhaps, not surprisingly, it suddenly came about that somebody in another room had just traded in their fractional share in a property at their Monterey Resort and we were very lucky as these didn't come around very often and we were the fortunate ones to be there when this happened. They stated that they could give us a special deal on the share and put a deal together with them suggesting that we would be given a good level of points as well as owning the property. They said it was an investment whereby the property would yield a percentage of money after sale in 19 years.

We finally agreed to go with full membership thinking we would be able to take the holidays we wanted to the counties we wanted to visit and thinking the points we had would allow us to achieve this. We signed the documents and were told we could get

out of this membership easily at any time. Bearing in mind that we finally signed the paperwork around 7:30pm after being with them from 9:30am in the morning!

Following this we were then advised that we had been awarded 1,360 points and we thought that, as they had all the info of our proposed holiday planning, they had taken this into account when putting the offer together for us. They also advised us that we would have a second 'bonus week 'to take when we wanted to one of their other CLC resorts

After signing the agreement we were taken back to our apartment and left to enjoy the rest of our holiday although we still had a visit the following day so that they could be excited for us and telling us that we were so lucky and should look forward to some fantastic holidays.

We did have some doubts the day after signing the agreement but had convinced ourselves that we had made the right choice given the holidays we wanted to take in the future so continued to enjoy our holiday

Mrs and Mr M haven't said anything in their testimony here which makes me think the Supplier did anything more than simply give a factual description of how the product worked. But, in any event, on my reading of what they've had to say here, it seems they made the Fractional Club purchase for the holidays the membership could provide to them, having had a trial membership previously.

Regarding the Time of Sale 2 (their purchase of Signature Collection membership), Mrs and Mr M don't appear to have provided any testimony in their statement in relation to that purchase at all.

So, on my reading of the evidence before me, the prospect of a financial gain from

Fractional Club and Signature Collection membership was not an important and motivating factor when Mrs and Mr M decided to go ahead with their purchases. That doesn't mean they weren't interested in a share in the Allocated Properties. After all, that wouldn't be surprising given the nature of the product at the centre of this complaint. But as Mrs M herself doesn't persuade me that their purchases were motivated by their shares in the Allocated Properties and the possibility of a profit, I don't think breaches of Regulation 14(3) by the Supplier were likely to have been material to the decisions Mrs and Mr M ultimately made.

On balance, therefore, even if the Supplier had marketed or sold the Fractional Club and Signature Collection memberships as an investment in breach of Regulation 14(3) of the Timeshare Regulations, I am not persuaded that Mrs and Mr M's decisions to purchase Fractional Club and Signature Collection membership at the Times of Sale were 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 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 Mrs M and the Lender were unfair to her even if the Supplier had breached Regulation 14(3).

Section 140A: Conclusion

Given all of 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 Mrs M and the Lender under the Credit Agreements and related Purchase Agreements were unfair to her. And as things currently stand, I don't think it would be fair or reasonable that I uphold this complaint on that basis."

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

The Lender responded to the PD and accepted it. The PR also responded – they did not accept the PD and provided some further comments and evidence they wish to be considered.

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.

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 only relate to the issue of whether the credit relationships between Mrs M and the Lender were unfair. In particular, the PR has provided further comments in relation to whether the memberships were sold to Mrs M as an investment at the Times of Sale. They've also now argued for the first time that the payment of a commission by the Lender to the Supplier led to unfair credit relationships.

As outlined in my PD, 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 PD. 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 PD. So, I'll focus here on the PR's points raised in response.

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

The Supplier's alleged breaches of Regulation 14(3) of the Timeshare regulations

As I explained in my PD, on my reading of their testimony, Mrs and Mr M haven't said anything which makes me think the Supplier did anything more than simply give a factual description of how the product worked. But, in any event, I explained that it seems they made the Fractional Club purchase at the Time of Sale 1 for the holidays the membership could provide to them, having had a trial membership previously.

And, regarding the Time of Sale 2 (their purchase of Signature Collection membership), I said Mrs and Mr M don't appear to have provided any testimony in their statement in relation to that purchase at all.

So, I wasn't persuaded that the evidence suggested that Mrs (and Mr) M purchased either of their Fractional Club and Signature Collection memberships in whole or in part down to any breach of Regulation 14(3).

I have considered PR's submissions here, but I have not changed my mind from my provisional findings.

I agree with PR that just because a purchaser was also interested in taking holidays with the Supplier, that does not preclude them also being motivated to take out Fractional Club or Signature Collection membership by any investment element – indeed I would find it surprising if any members were not interested in taking holidays, given the nature of the products. However, for the reasons set out in this decision and in my PD, I do not find any such investment motivation in relation to either of the Times of Sale.

The PR has raised a concern that I didn't consider the whole of Mrs and Mr M's witness statement. And, they highlighted a particular paragraph of their testimony which I didn't refer to in my PD. However, to be clear, I have considered the entirety of what Mrs and Mr M have had to say. And the particular paragraph the PR has referred to in their response relates to Mrs and Mr M's description of what happened following a different purchase they made in 2017 – one that is not the subject of this complaint and the PR is already aware is being dealt with in a separate decision.

I also explained in my PD that Mrs and Mr M didn't appear to have provided any testimony in relation to their purchase at the Time of Sale 2 at all. On this point, the PR said that Mrs and Mr M "*possibly decided not to make repetitive statements*" since the Supplier's sales materials were standardised and generally all followed the same pattern, with similar representations likely made across multiple sales.

This appears to be a guess on the PR's part, rather than something they've actually confirmed with Mrs and Mr M. And here, Mrs and Mr M were not buying the same type of membership at each Time of Sale. While they were similar in that they were both asset-backed, the sales presentations used would not have been the same and the two product types did have different benefits associated with them. For example, Signature Collection membership (unlike their Fractional Club membership) also offered guaranteed availability of their Allocated Property in a set week each year, or they could use their points to stay at another property from the Supplier's portfolio of resorts.

But in any event, I think here the PR is conflating the issue of whether there was a breach of Regulation 14(3) at the Times of Sale, with whether any such breach was material to Mrs and Mr M's purchasing decisions. In order to determine that issue, it's important to be provided with testimony which actually relates to the purchase being complained about as ultimately there may have been different purchasing motivations for different purchases. And again, there is no testimony provided which specifically relates to the Time of Sale 2 at all.

So, ultimately, for the above reasons, along with those I already explained in my PD, I remain unpersuaded that any breach(es) of Regulation 14(3) were material to Mrs (and Mr) M's purchasing decisions.

The PR says that as the Supplier's pricing sheet set out the "unit share" Mrs and Mr M acquired under their Fractional Club and Signature Collection memberships, this shows the investment element played "quite an important role" in convincing them to purchase. But I

don't agree with that analysis. The pricing sheet was a proforma document that captured a number of details about the purchase in a standardised format. And the Supplier would have recorded that information irrespective of the customer's motivations for purchasing. So, I don't consider this document offers any insight into Mrs and Mr M's motivations for making their purchases.

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 and Signature Collection. 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, just because the complaints that were subject to judicial review were upheld, it does not follow I must (or should) also uphold Mrs M's complaint.

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 Mrs (and Mr) M's decisions to make the purchases were motivated by the prospect of a financial gain. So, I still don't think the credit relationships between Mrs M and the Lender were unfair to her for this reason.

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

The PR says that a payment of commission from the Lender to the Supplier at the Times of Sale should lead me to uphold this complaint because, simply put, information in relation to that payment went undisclosed at the Times 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 Mrs M in arguing that her credit relationships with the Lender were unfair to her 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 Mrs M, 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 Mrs M 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 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 failure is itself a reason to find the credit relationships in question unfair to Mrs M.

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 1 that Mrs M entered into wasn't high. At £551.08, it was only 2.5% of the amount borrowed and even less than that (2.3%) as a proportion of the charge for credit. And similarly, in relation to the Credit Agreement 2, it would not have been more than 2.5% of the amount borrowed. So, had Mrs M known at the Times of Sale that the Supplier was going to be paid a flat rate of commission at that level, I'm not persuaded that she either wouldn't have understood that or would have otherwise questioned the size of the payment at that time. After all, Mrs M wanted Fractional Club and Signature Collection membership and had no obvious means of her own to pay for them. And at such a low level, the impact of commission on the cost of the credit she needed for a

timeshare she wanted doesn't strike me as disproportionate. So, I think she would still have taken out the loans to fund her purchases at the Times of Sale had the amount of commission been disclosed.

What's more, based on what I've seen, 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 Mrs M but as the supplier of contractual rights she 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 her 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 Mrs M.

S140A conclusion

Given all of 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 Mrs M and the Lender under the Credit Agreements and related Purchase Agreements were unfair to them. So, I don't think it is fair or reasonable that I uphold this complaint on that basis.

Commission: The Alternative Grounds of Complaint

While I've found that Mrs M's credit relationships with the Lender weren't unfair to her 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 Mrs M'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 Mrs M (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 Mrs M 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 her. 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 she would still have taken out the loans to fund their purchases at the Times of Sale had there been more adequate disclosure of the commission arrangements that applied at that time.

Conclusion

In conclusion, given the facts and circumstances of this complaint, I do not think that the Lender acted unfairly or unreasonably when it dealt with Mrs M's Section 75 claims, and I am not persuaded that the Lender was party to credit relationships with her under the Credit Agreements that were unfair to her 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 her.

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 Mrs M to accept or reject my decision before 20 February 2026.

Fiona Mallinson
Ombudsman