DRN-6097461

The complaint

Mr and Mrs M say Shawbrook Bank Limited – (the Lender) unfairly declined their claim under section 75 of the Consumer Credit Act 1974 ('CCA'). And they say their creditor-debtor relationship with the Lender was unfair to them under section 140A of the CCA.

What happened

In September 2012, Mr and Mrs M purchased a timeshare membership – which I'll call 'Fractional Club' membership – from a timeshare provider (the 'Supplier'). It included 747 fractional points. The membership was asset backed – which means it gave Mr and Mrs M more than just holiday rights. It included a share of the net sale proceeds of a property named on the purchase agreement (the 'Allocated Property') after the membership term ended.

In July 2013, Mr and Mrs M essentially paid £8,650 to increase their fractional points to 1,240. They paid £22,294 for this and traded in their existing Fractional Club membership for £13,664, borrowing £8,650 from Shawbrook to pay the balance. It is this sale that is the subject of their complaint.

On 27 March 2018, Mr and Mrs M – using a professional representative ('PR1') – wrote to the Lender (the 'Letter of Claim'), to make a claim under section 75 of the CCA.

In summary, the Letter of Claim said that the Supplier made two misrepresentations. Firstly, it told Mr and Mrs M that the only way they could 'exit' their existing timeshare membership was to purchase Fractional Club membership, which isn't true. Secondly, it guaranteed that Mr and Mrs M would 'exit' the Fractional Club membership after a finite period, but this wasn't true as a purchaser must first be found. In addition:

- It went on to say that there had been a breach of contract in respect of Mr and Mrs M receiving the net proceeds from the sale of the property, as there was nothing within the documentation to confirm that Mr and Mrs M owned any part of the property and that they would receive any proceeds from the sale.
- It said specific terms in the management agreement that governed Fractional Club membership were unfair pursuant to the Unfair Terms in Consumer Contracts Regulations 1999.
- The Supplier didn't conduct a proper assessment of Mr and Mrs M's financial position and their ability to repay the loan, which rendered the creditor-debtor relationship unfair to them.
- The Supplier applied 'undue' pressure on Mr and Mrs M to procure their agreement to the loan.
- The Supplier 'breached EU law'.
- The accommodation wasn't exclusive.

Shawbrook dealt with the Letter of Claim as a complaint and issued its final response letter on 12 November 2018. It rejected the complaint on every ground. PR1 then referred the complaint to our service. One of our investigators rejected the complaint on its merits.

PR1 asked that an ombudsman make a final decision, and it provided a 36-page submission which it described as being provided *'to assist a number of purchasers'* of Fractional Club membership.

In March 2023, Mr and Mrs M changed their professional representative to 'PR2'. In August 2023, PR2 made some further submissions. In summary, it said Mr and Mrs M were told the Fractional Club membership would be a 'good investment', and that at the end of the term, they would 'get their money back with a profit'. PR2 specifically referred to *R (on the application of Shawbrook Bank Ltd) v Financial Ombudsman Service Ltd [2023] EWHC 1069 (Admin) ('Shawbrook v Financial Ombudsman Service')*, which confirmed that a creditor-debtor relationship could be unfair under section 140A of the CCA if the timeshare membership was sold as an investment. And it said the contract should be void for illegality.

Another investigator reconsidered the complaint but again rejected it on its merits.
PR2 asked that an ombudsman make a final decision. Mr and Mrs M also provided their comments in respect of the purchase.

The case was passed to me for review. I issued a provisional decision explaining why I didn't think the complaint should be upheld. In response, the Lender said it had nothing further to add.

PR2 didn't agree with my decision. In summary it said:

- From its experience, it considered there was a *"modus operandi"* among timeshare companies as to the manner in which sales were conducted and representations made. It believed misrepresentations were systemic, largely uniform and could be described as *"bait and drop."*
- In relation to the original submissions from PR1, it clarified how that evidence was obtained. It said clients did not see, review or approve the final written submission, and relied on PR1's professional judgement. It said information about the Timeshare being sold as an investment was provided by its clients to PR1, but it chose not to include it.
- It provided a witness statement from the clients and said the omissions on the part of PR1 should not be held against them.
- It said on a balance of probabilities, its client's allegations that the Timeshare was sold as an investment were accurate.
- It said I had referenced the witness statements as being generic, which it said wasn't correct.
- It asked in light of the clarifications it had provided, that I reconsider the weight placed on its client's evidence, and any omissions from the 2021 complaint, were it said, the responsibility of PR1, not its clients.
- It provided a witness statement from Mr and Mrs M that set out their recollections of what they had been told during the purchase and the information provided to PR1 and PR2.

The legal and regulatory context

When considering what is, in my opinion, fair and reasonable in all the circumstances of the complaint, I'm required by DISP 3.6.3R of the Financial Conduct Authority ('FCA') Handbook 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's relevant to this complaint is, in many ways, no different to that shared in several hundred decisions by ombudsmen on very similar complaints – which can be found on our website. I therefore don't think it's necessary to set out that context in detail here. But I'd add that the following regulatory rules/guidance are also relevant:

The Office of Fair Trading's Irresponsible Lending Guidance – 31 March 2010

The primary purpose of this guidance was to provide greater clarity for businesses and consumer representatives as to the business practices that the Office of Fair Trading (the 'OFT') thought might have constituted irresponsible lending for the purposes of Section 25(2B) of the CCA. Below are the most relevant paragraphs as they were at the relevant time:

• Paragraph 2.2
• Paragraph 2.3
• Paragraph 5.5

The OFT's Guidance for Credit Brokers and Intermediaries – 24 November 2011
The primary purpose of this guidance was to provide clarity for credit brokers and credit intermediaries as to the standards expected of them by the OFT when they dealt with actual or prospective borrowers. Below are the most relevant paragraphs as they were at the relevant time:

• Paragraph 2.2
• Paragraph 3.7
• Paragraph 4.8

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.

And having done so, I remain of the opinion that this complaint should not be upheld. I've set out my reasoning again below.

But, before I explain why, I want to make it clear that my role as an ombudsman isn't to address every single point that's been made to date – it's to decide what's fair and reasonable in the circumstances of this complaint. So, if I haven't commented on, or referred to, something that either party has said, it doesn't mean I haven't considered it.

Section 75

Section 75 of the CCA protects consumers who buy goods and services on credit. It says if certain conditions are met, that the finance provider is legally answerable for any misrepresentation or breach of contract by the supplier.
In the Letter of Claim, PR1 says the Supplier misrepresented the Fractional Club membership in two ways: Firstly, it told Mr and Mrs M that the only way they could 'exit' their existing timeshare membership was to purchase Fractional Club membership, which wasn't true. Secondly, it guaranteed that Mr and Mrs M would 'exit' the Fractional Club membership after a finite period, but this wasn't true as a purchaser must first be found.

But, neither PR1 nor PR2 has provided any evidence to support the first allegation.

Furthermore, Mr and Mrs M only had a trial membership before they purchased their first Fractional Club membership. This was valid for a few years only and the term of it was for a significantly shorter time (Mr and Mrs M said it was 36 months), than the Fractional Club membership that was purchased. As a result, I think the argument that Mr and Mrs M purchased Fractional Club membership, which had a 19-year term, to 'exit' their trial membership, isn't plausible.

And while, as I understand it, the sale of the Allocated Property could be postponed in certain circumstances according to the Fractional Club Rules, Mr and Mrs M say little to nothing to persuade me that they were given a guarantee by the Supplier that the Allocated Property would be sold on a specific date, when such a promise would have been impossible to stand by given the inevitable uncertainty of selling property some way into the future. And as there's nothing else on file to support the PR's allegation, I'm not persuaded that there was a representation by the Supplier on the issue in question that constituted a false statement of fact.

Mr and Mrs M have said booking holidays in the trial membership period was a real struggle. And they say that the Supplier's sales team made it attractive and reassuring to purchase Fractional Club membership with all its added benefits including better availability – which, on my reading of the complaint, suggests that the Supplier was not living up to its end of the bargain, potentially breaching the Purchase Agreement.

Yet, 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 likely to have been signed by Mr and Mrs M state that the availability of holidays was/is subject to demand. It also looks like they made use of their fractional points to holiday on a number of occasions. I accept that they may not have been able to take certain holidays. But I have not seen enough to persuade me that the Supplier had breached the terms of the Purchase Agreement.

Regarding the lack of exclusivity of the accommodation, the contemporaneous documents I've seen relating to the other accommodation available through the membership, do not say that the resorts in the Supplier's portfolio were exclusive to members. Resorts owned by the Supplier were described as "mixed use", while other resorts were described as resorts in which the Supplier had "secured accommodation…under its control" or which were "available through [our] partnerships with other resorts". None of this appears to state or imply that the resorts within the portfolio could only be booked by members.

While I've no doubt the Supplier would have taken the opportunity to promote the quality of its resorts and services, I've not seen evidence that it made specific false statements about them. Also, Mr and Mrs M's recollections, have been provided a long time after the original claim, which made no mention of any problems with availability. In the circumstances, I've simply seen insufficient evidence to safely conclude that there were problems with availability, and they were such that there was an actionable misrepresentation or a breach of contract by the Supplier.

Based on what I've seen, I'm not persuaded that there was a misrepresentation or a breach of contract by the Supplier for which the Lender is legally answerable. It follows that I don't think it was unfair for the Lender to decline the claim under section 75.

Section 140A

Section 140A says a court may make an order if it thinks the relationship between a creditor and a debtor is unfair to the debtor. It's deliberately framed in wide terms, and a finding of unfairness can flow from something done on the creditor's behalf in connection with a

‘related agreement’. Here, the purchase agreement is a ‘related agreement’. And, by virtue of section 56 of the CCA, the Lender is legally answerable for the Supplier’s actions.

Having considered the entirety of the relationship, I don’t think it was unfair for the purposes of section 140A. In reaching this conclusion, I’ve considered:

(1) The standard of the Supplier’s commercial conduct, which includes its sales and marketing practices at the time of sale, and any relevant training material.
(2) The information provided by the Supplier at the time of sale, including the contracts and any disclaimers made by the Supplier.
(3) The commission arrangements between the Lender and the Supplier at the time of sale and the disclosure of those arrangements.
(4) All the evidence provided by both parties on what was supposedly said and/or done at the time of sale.
(5) The inherent probabilities of what’s likely to have happened given the circumstances of each sale, and, when relevant
(6) Any existing unfairness from a related credit agreement.

The Supplier’s sales and marketing practices at the time of sale

There are several reasons why PR1 and PR2 say Mr and Mrs M’s creditor-debtor relationship with the Lender was unfair to them.

PR1 says that the right affordability checks weren’t carried out. But even if I were to find that the Lender failed to do everything it should have when it agreed to lend (and I make no such finding), I would have to be satisfied that the money lent to Mr and Mrs M 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. But from the information provided, I am not satisfied that the lending was unaffordable for them.

PR1 and PR2 both say Mr and Mrs M were subject to pressure during the sale. I appreciate that Mr and Mrs M may have felt weary after a sales process that went on for a long time. Mr and Mrs M have explained the “hard sell” technique of the Supplier’s representative. But it’s not clear to me from what Mr and Mrs M have said, as to what was done by the Supplier during the sales presentation, that made them feel as if they had no choice but to purchase Fractional Club membership when they simply didn’t want to.

They were also given a 14-day cooling off period and they have not provided a credible explanation for why they did not cancel their membership. Also, they went on to increase their fractional points after their initial purchase – which I find difficult to understand if the reason they went ahead with the first purchase was because they were pressured into it. In the circumstances, I’ve not seen sufficient evidence to conclude that Mr and Mrs M made the decision to purchase additional Fractional Club membership points, because their ability to exercise that choice was significantly impaired by pressure from the Supplier.

PR1 also says that there are some unfair contract terms in the purchase agreement. In response to my provisional decision, Mr and Mrs M said in the witness statement provided with PR2’s response, that they had been told maintenance fees would increase in line with inflation or words to that effect. They said that maintenance fees had increased by approximately 200%, far exceeding any inflationary measure. And the fee demands demonstrated that increases were not inflation linked.

With the response to the PD, PR2 has supplied a schedule of the management fees paid by Mr and Mrs M, from 2014 through to 2026. The fees have increased from £1,398 in 2014 to £2,154 in 2026. Over a 12-year period, this is an increase of £756 and approximately 50%, not the 200% stated by PR2. And over a 12-year period, this doesn't strike me as being an excessive level of increases that would suggest that maintenance fees had been increased unfairly in practice. I've noted that Mr and Mrs M increased their fractional points over time, which would also explain some of the increase.

Mr and Mrs M also say that they were led to believe that maintenance fees would increase in line with inflation. But they haven't provided any documentation or other evidence which supports what they have said. And the documentation that has been referred to from the Supplier, makes no mention that management fees would only increase in line with inflation. So, I can't safely say on a balance of probabilities that they were told this.

I've also considered the explanation for the 2023 management charge that has been provided. And the explanation provided for the increase in charges for that year doesn't appear to me to be unreasonable. I'm therefore not persuaded that any of the terms governing the Fractional Club membership are likely to have led to an unfairness that warrants a remedy.

Overall, therefore, I don't think that Mr and Mrs M's credit relationship with the Lender was rendered unfair to them under Section 140A for any of the reasons above. However, PR2 says the Fractional Club membership was sold and/or marketed as an investment in breach of Regulation 14(3) of the Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010 (the 'Timeshare Regulations'), and that this renders the relationship unfair under section 140A.

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

I'm satisfied that the Fractional Club membership meets the definition of a 'timeshare contract' and is a 'regulated contract' for the purposes of the Timeshare Regulations. Regulation 14(3) of the Timeshare Regulations says a supplier must not market or sell a proposed timeshare contract as an investment.

The term 'investment' isn't defined in the Timeshare Regulations. But I'll adopt the same definition that was used in *R (on the application of Shawbrook Bank Ltd) v Financial Ombudsman Service Ltd [2023] EWHC 1069 (Admin) ('Shawbrook v Financial Ombudsman Service')*, which says it's a transaction in which money or other property is laid out in the expectation or hope of financial gain or profit.

The Fractional Club membership clearly included an investment component in that Mr and Mrs M's share of the proceeds of the deferred sale offered the prospect of a financial return – whether or not, like all investments, that return was more, less or the same as the sum invested. But it's important to note that the fact that the Fractional Club membership included an investment component did not, in itself, transgress the prohibition in Regulation 14(3).

Regulation 14(3) prohibits the marketing or selling of a timeshare contract as an investment. It doesn't prohibit the existence of an investment component in a timeshare contract or the marketing and/or selling of such a contract per se. In other words, the Timeshare Regulations didn't ban products like the Fractional Club – they simply regulated how they were marketed and sold.

To conclude, therefore, that the Fractional Club membership was marketed or sold to Mr and Mrs M as an investment in breach of Regulation 14(3), I must 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 the Fractional Club membership was marketed and/or sold by the Supplier as an investment in breach of Regulation 14(3). On the one hand, it's clear that the Supplier made efforts to avoid specifically describing membership of the Fractional Club as an 'investment' or quantifying to prospective members, such as Mr and Mrs M, the financial value of their share in the net sales proceeds of the Allocated Property, along with the investment considerations, like the associated risk and reward.

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 and Mrs M as an investment in breach of Regulation 14(3).

However, as I explained in my provisional decision, whether there was a breach of the relevant prohibition by the Supplier is not ultimately determinative of the outcome for this complaint for reasons I'll explain, so it's not necessary for me to make a formal finding on this particular issue.

Would the credit relationship between the Lender and Mr and Mrs M have been rendered unfair to them had there been a breach of Regulation 14(3) of the Timeshare Regulations?

As I think it's possible the Supplier breached Regulation 14(3) at the time of sale, I now need to decide what impact it might have had on the fairness of the relationship between Mr and Mrs M and the Lender. I say this because in *Plevin v Paragon Personal Finance Ltd [2014] UKSC 61 ('Plevin')*, the Supreme Court said:

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

What this means is that a breach of Regulation 14(3) doesn't automatically mean the credit relationship is unfair for the purposes of section 140A. Such breaches and their consequences (if there are any) must be considered in the round rather than in a narrow or technical way. For me to conclude that a breach of Regulation 14(3) led to an unfair relationship, I need to see sufficient evidence to conclude, on the balance of probabilities, that the prospect of a financial gain was an important and motivating factor for Mr and Mrs M when they decided to increase their fractional points.

PR1 didn't provide any direct, first-hand testimony from Mr and Mrs M. And I've noted that it didn't say anything in its Letter of Claim about the Supplier marketing or selling the Fractional Club membership as an investment, despite making several other detailed allegations. And if that had been an important and motivating factor which led Mr and Mrs M into purchasing Fractional Club membership, I would have expected it to be specifically mentioned when the complaint was originally made.

I've thought carefully about what PR2 has said about the information regarding the Fractional Club membership being positioned to Mr and Mrs M as an investment, that would provide them with a profit, was communicated to PR1 by Mr and Mrs M, but omitted by it in the original complaint. I can understand that taking into account what they've said, Mr and Mrs M and PR2 are frustrated with the omissions they say PR1 made in presenting the case.

And it's regrettable that all of Mr and Mrs M's recollections, weren't articulated fully in the original complaint. But unfortunately, I don't have any evidence of what they told PR1, so I simply don't know what they told it. And as the decision maker, I have to consider the complaint that has been made on their behalf by PR1, not the complaint that Mr and Mrs M and PR2 think ought to have been made. So, I'm not persuaded to change my opinion on this point from what I've set out above.

In my provisional decision, I noted that PR2's submissions in August 2023 (not the witness statement that it referred to in its response to my provisional decision) are identical to the submissions it has made in other cases. So, when it says, for example, 'Our Client [sic] was told that Fractional Ownership would be a 'good investment'…'. And the clearly generic nature of the submission provides me with very little insight from Mr and Mrs M as to what they were told during the sales process.

In December 2023, Mr and Mrs M provided their recollections about the sales, and it's apparent it was prepared after the complaint was rejected for the second time. PR2 has also provided an updated statement from Mr and Mrs M in response to my provisional decision. I've already set out my thinking in relation to the omissions PR2 says were made by PR1. And the statements were provided after the High Court had handed down its judgment in *Shawbrook v Financial Ombudsman Service* and it had been approximately ten years since the events complained about and more than five years since the Letter of Claim from when the first statement was provided.

I remain of the opinion informed by my own experience, that the more time that passes between a complaint and the events complained about, the greater the risk that the consumers' recollections will be vague and inaccurate and potentially influenced by discussions with others and even the complaint process itself. And there's no evidence on file to corroborate the summary of Mr and Mrs M's recent recollections. So, I still think there's a real risk that their recollections were influenced by PR2's submissions and/or the judgment in Shawbrook v Financial Ombudsman Service. This means notwithstanding the further evidence and submissions I've been provided with in response to my provisional decision, I can't give them the weight necessary to conclude that the credit relationship in question was unfair because of a breach of Regulation 14(3).

The information provided by the Supplier at the time of sale

PR1 said that a payment of commission from the Lender to the Supplier at the time of each sale should lead me to uphold this complaint because, simply put, information in relation to those payments wasn't disclosed.

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 held 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 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.

I think the Supreme Court's judgment in Hopcraft, Johnson and Wrench sets out principles which apply to credit brokers other than car dealer-credit brokers. So, when considering concerns 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 FCA's DISP rules.

But I don't think Hopcraft, Johnson and Wrench assists Mr and Mrs M in arguing that one or more of their credit relationships with Shawbrook 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 Shawbrook and the Supplier were tied to one another contractually or commercially in a way that wasn't properly disclosed to Mr and 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 Mr and 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 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 don't 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. So, it isn't necessary for me to make a formal finding on this because, even if the Lender and the Supplier failed to follow the relevant regulatory guidance at the time of sale, it's for the reasons set out below that I don't think any such failure is itself a reason to conclude that the credit relationship in question is unfair to Mr and 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 that Mr and Mrs M entered into wasn't high. At £865 the payment was only 10.00% of the amount borrowed and even less than that (5.46%) as a proportion of the charge for credit.

So had they known that the Supplier was going to be paid a flat rate of commission at that level, I'm not persuaded that they either wouldn't have understood that or would have otherwise questioned the size of the payment at the time. After all, Mr and Mrs M wanted the 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 Mr and Mrs M would still have taken out the loan to fund their purchase 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 a timeshare. 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 express or implied – to put to one side its commercial interests in pursuit of that goal when arranging the credit agreement. And as it wasn't acting as an agent of Mr and Mrs M but as the supplier of contractual rights they obtained under the purchase agreement, 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 agreement and thus a fiduciary duty.

Overall, I'm not persuaded that the commission arrangement between the Supplier and the Lender were likely to have led to a sufficiently extreme inequality of knowledge that rendered the credit relationship unfair to Mr and Mrs M.

Section 140A conclusion

Given all the factors I've looked at in this part of my decision, and having taken them all into account, I'm not persuaded that the credit relationship between Mr and Mrs M and the Lender was unfair to them. And, I don't think it would be fair to uphold this complaint on that basis.

Commission: alternative grounds

While I've found that Mr and Mrs M's credit relationship with the Lender wasn't 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 M'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 M (i.e., secretly). And the second relates to the Lender's compliance with the regulatory guidance in place at the time 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 M a fiduciary duty. So, the remedies that might be available in 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 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 purchase had there been more adequate disclosure of the commission arrangement that applied at that time.

Overall conclusion

In conclusion, given the facts and circumstances of this complaint, I don't think the Lender acted unfairly when it declined Mr and Mrs M's section 75 claim. And I'm not persuaded that the Lender was party to a credit relationship with them under the credit agreement and related purchase 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 to direct the Lender to compensate Mr and Mrs M.

My final decision

For the reasons given above, my decision is not to uphold this complaint.

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

Simon Dibble
Ombudsman