DRN-6098940

The Complaint

Mr and Mrs K's complaint is, in essence, that Shawbrook Bank Limited (the 'Lender') acted unfairly and unreasonably by (1) being party to an unfair credit relationship with them under Section 140A of the Consumer Credit Act 1974 (as amended) (the 'CCA') and (2) deciding against paying a claim under Section 75 of the CCA.

Background to the Complaint

Mr and Mrs K were members of a timeshare provider (the 'Supplier') – having purchased a Trial membership initially with the Supplier. But the product at the centre of this complaint is their membership of a timeshare that I'll call the 'Fractional Club' – which they bought on 29 May 2017 (the 'Time of Sale'). After trading in their Trial timeshare membership, they entered into an agreement with the Supplier to buy 1,130 fractional points at a cost of £15,868 (the 'Purchase Agreement').

Fractional Club membership was asset backed – which meant it gave Mr and Mrs K more than just holiday rights. It also included a share in the net sale proceeds of a property named on the Purchase Agreement (the 'Allocated Property') after their membership term ends. Mr and Mrs K paid for their Fractional Club membership by taking finance of £15,868 from the Lender (the 'Credit Agreement').

Mr and Mrs K – using a professional representative (the 'PR') – wrote to the Lender on 1 March 2024 (the 'Letter of Complaint') to raise a number of different concerns. As those concerns have not changed since they were first raised, and as both sides are familiar with them, it is not necessary to repeat them in detail here beyond the summary above.

The Lender dealt with Mr and Mrs K's concerns as a complaint and issued its final response letter on 7 May 2024, rejecting it on every ground.

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

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

I issued a provisional decision ('PD') dated 12 November 2025, concluding the complaint should not be upheld. The findings from my PD are set out below.

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

The legal and regulatory context that I think is relevant to this complaint is no different to that shared in several hundred 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 here.

What I've provisionally decided – and why

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. And having done that, I do not think this complaint should be upheld.

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

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

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

The Lender rejected Mr and Mrs K's claim on multiple grounds. I have considered the Lender's response, but even if I were to find the Lender should not have declined the claim for the reasons it did, I cannot reasonably expect the Lender to meet that claim. That's because I need to take into account the Limitation Act 1980 (the "LA").

Mr and Mrs K purchased their membership on 29 May 2017. Although a court is only able to make a ruling under the LA, as it is relevant law, I have also considered any impact this may have on Mr and Mrs K's claim under Section 75 of the CCA.

A claim under Section 75 is a "like" claim against the creditor. It essentially mirrors the claim Mr and Mrs K could make against the Supplier. A claim for misrepresentation against the Supplier would ordinarily be made under Section 2(1) of the Misrepresentation Act 1967. And the limitation period to make such a claim expires six years from the date on which the cause of action accrued (see Section 2 of the LA). But a claim under Section 75, like this one, is also "an action to recover any sum by virtue of any enactment" under Section 9 of the LA. And the limitation period under that provision is also six years from the date on which the cause of action accrued.

The date on which the cause of action accrued here was the Time of Sale. I say this because Mr and Mrs K entered into the purchase of the timeshare product at that time based upon the alleged misrepresentations of the Supplier – which Mr and Mrs K say they relied upon. And as the Credit Agreement with the Lender provided funding to help finance that purchase, it was when they entered into the Credit Agreement that they allegedly suffered the loss.

Mr and Mrs K first notified the Lender of their Section 75 complaint on 1 March 2024. As more than six years had passed between the Time of Sale and when they first put their complaint to the Lender, I cannot conclude that the Lender should accept responsibility for such a claim.

However, I have considered whether these alleged misrepresentations could have been

something that caused an unfair credit relationship.

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

There are other aspects of the sales process that, being the subject of dissatisfaction, I must explore with Section 140A in mind if I am to consider this complaint in full – which is what I have done next.

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

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

I have then considered the impact of these on the fairness of the credit relationship between Mr and Mrs K and the Lender.

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

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

However, I've firstly considered whether the misrepresentations they allege were made by the Supplier in the context of their Section 75 claim could have caused any unfairness for the purposes of Section 140A.

It was said in the Letter of Complaint that Fractional Club membership had been misrepresented by the Supplier at the Time of Sale because Mr and Mrs K 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. 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. 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 is not 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 held.

As for point 3, while it is possible that Fractional Club membership was misrepresented at the Time of Sale for that reason, I do not think it is probable. They have given little to none of the colour or context necessary to demonstrate that the Supplier made a false statement of existing fact and/or opinion. And as there is not any other evidence on file to support the suggestion that Fractional Club membership was misrepresented for that reason, I do not think it was.

So, while I recognise that Mr and Mrs K and the PR have concerns about the way in which Fractional Club membership was sold by the Supplier, I do not think this caused any unfairness in Mr and Mrs K's credit relationship with the Lender such that it warrants a remedy.

Turning to the points specifically raised in relation to the potential unfairness of the relationship between Mr and Mrs K and the Lender, the PR says, for instance, that the right checks were not carried out before the Lender lent to Mr and Mrs K. I have not 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 Mr and Mrs K 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 Mr and Mrs K.

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 was not permitted to enforce the Credit Agreement. However, it looks to me like Mr and Mrs K knew, amongst other things, how much they were borrowing and repaying each month, who they were borrowing from and that they were borrowing money to pay for Fractional Club membership. And as the lending does not look like it was unaffordable for them, even if the Credit Agreement was arranged by a broker that did not have the necessary permission to do so (which I make no formal finding on), I cannot see why that led to a financial loss for Mr and Mrs K– such that I can say that the credit relationship in question was unfair on them as a result. And with that being the case, I am not persuaded that it would be fair or reasonable to tell the Lender to compensate them, even if the loan was not arranged properly.

I acknowledge that Mr and Mrs K may have felt weary after a sales process that went on for a long time. But they say little about what was said and/or done by the Supplier during their sales presentation that made them feel as if they had no choice but to purchase Fractional Club membership when they simply did not want to. They were also given a 14-day cooling off period and they have not provided a credible explanation for why they did not cancel their membership during that time. And with all of that being the case, there is insufficient evidence to demonstrate that Mr and Mrs K made the decision to purchase Fractional Club membership because their ability to exercise that choice was significantly impaired by pressure from the Supplier.

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

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

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

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

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

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

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

A share in the Allocated Property clearly constituted an investment as it offered Mr and Mrs K 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 does not prohibit the mere existence of an investment element in a timeshare contract or prohibit the marketing and selling of such a timeshare contract per se.

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

To conclude, therefore, that Fractional Club membership was marketed or sold to Mr and Mrs K as an investment in breach of Regulation 14(3), I have to be persuaded that it was more likely than not that the Supplier marketed and/or sold membership to them as an investment, i.e. told them or led them to believe that Fractional Club membership offered them the prospect of a financial gain (i.e., a profit) given the facts and circumstances of this complaint.

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

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

On the other hand, I acknowledge that the Supplier's sales process left open the possibility that the sales representative may have positioned Fractional Club membership

as an investment. So, I accept that it is equally possible that Fractional Club membership was marketed and sold to Mr and Mrs K 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 is not necessary to make a formal finding on that particular issue for the purposes of this decision.

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

Having found that it was possible that the Supplier breached Regulation 14(3) of the Timeshare Regulations at the Time of Sale, I now need to consider what impact that breach had on the fairness of the credit relationship between Mr and Mrs K and the Lender under the Credit Agreement and related Purchase Agreement as the case law on Section 140A makes it clear that regulatory breaches do not automatically create unfairness for the purposes of that provision. Such breaches and their consequences (if there are any) must be considered in the round, rather than in a narrow or technical way.

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

But on my reading of the evidence before me, the prospect of a financial gain from Fractional Club membership was not an important and motivating factor when they decided to go ahead with their purchase. To help me decide this point, I have carefully considered what Mr and Mrs K have said in the course of their complaint about how the membership was sold to them and their motivation for taking it out.

As I have stated above, it is said within the Letter of Complaint that Mr and Mrs K were told that they had purchased an investment that would appreciate in value. There was no further detail underpinning this statement within the Letter of Complaint.

The PR has provided a statement from Mr and Mrs K containing their recollections from the Time of Sale. And they highlight within this, Mr and Mrs K said:

"Our belief was that we owned part of a specific property in Malaga and aside from using the points associated with that ownership to enjoy holidays yearly; [Supplier] would then eventually provide us with the value of the property at the end of 2032 by selling the property and giving us our share of the property sale. Whilst 1/52 weeks worth of the property isn't a lot we still believed the property would give us a good return upon eventual sale".

Mr and Mrs K's recollections are not entirely correct in that their membership term ends in 2035, not 2032. Mr and Mrs K also own a percentage share of the property in question, not a fraction and this was made clear in the paperwork Mr and Mrs K received following their purchase. With that being said, Mr and Mrs K recall being told they would receive their share of the property, which to me seems like a factual description of how Fractional Club ownership operated.

Mr and Mrs K recognise their share is not substantial but believe it would still generate a good return upon the eventual sale. They have not described in any detail what the Supplier may have told them about the return they were expecting to receive and like I

said, it seems that they were given a factual description about how their Fractional Club membership and the eventual sale of the Allocated Property worked.

As I have set out, it is possible that the Fractional Club membership was marketed and sold to Mr and Mrs K as an investment but I must consider, if it was, whether that was material to their decision to proceed with their purchase and I am not convinced it was. Their statement is lacking any real detail that leads me to think that the prospect of a financial gain was a motivating factor in Mr and Mrs K's decision.

Having read their statement, Mr and Mrs K place much more emphasis on the holiday rights the membership provided them with. They said how they have "…used [Supplier] yearly prior to the pandemic" and then went on to describe the difficulties since. In their own words, they say "I thought I was paying for exclusive family holidays". They were evidently interested in the type of holidays that the Supplier had to offer, having already taken a trial membership. So in my opinion, I think Mr and Mrs K were motivated by the holiday rights their membership provided them with and I think they proceeded with the purchase on this basis irrespective of any promotion of the investment element by the Supplier.

That does not mean they were not interested in a share in the Allocated Property. After all, that would not be surprising given the nature of the product at the centre of this complaint. But as Mr and Mrs K themselves do not persuade me that their purchase was motivated by their share in the Allocated Property and the possibility of a profit, I do not think a breach of Regulation 14(3) by the Supplier was likely to have been material to the decision Mr and Mrs K ultimately made.

On balance, therefore, even if the Supplier had marketed or sold the Fractional Club membership as an investment in breach of Regulation 14(3) of the Timeshare Regulations, I am not persuaded that Mr and Mrs K's decision to purchase Fractional Club membership at the Time of Sale was motivated by the prospect of a financial gain (i.e., a profit). On the contrary, I think the evidence suggests they would have pressed ahead with their purchase whether or not there had been a breach of Regulation 14(3). And for that reason, I do not think the credit relationship between Mr and Mrs K and the Lender was unfair to them even if the Supplier had breached Regulation 14(3).

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

The PR says that Mr and Mrs K were not given sufficient information at the Time of Sale by the Supplier about the ongoing costs of Fractional Club 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 have already indicated, the case law on Section 140A makes it clear that it does not automatically follow that regulatory breaches create unfairness for the purposes of the unfair relationship provisions. The extent to which such mistakes render a credit relationship unfair must also be determined according to their impact on the complainant.

I acknowledge that it is also possible that the Supplier did not give Mr and Mrs K sufficient information, in good time, on the various charges they could have been subject to as Fractional Club members in order to satisfy the requirements of Regulation 12 of the Timeshare Regulations (which was concerned with the provision of 'key information'). But even if that was the case, I cannot see that the ongoing costs of membership were applied unfairly in practice. And as neither Mr and Mrs K nor the PR have persuaded me that they would not have pressed ahead with their purchase had the finer details of the Fractional Club's ongoing costs been disclosed by the Supplier in compliance with

Regulation 12, I cannot see why any failings in that regard are likely to be material to the outcome of this complaint given its fact and circumstances.

As for the PR's argument that there were one or more unfair contract terms in the Purchase Agreement, I cannot see that any such terms were operated unfairly against Mr and Mrs K 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 am not persuaded that any of the terms governing Fractional Club membership are likely to have led to an unfairness that warrants a remedy.

The Supplier's alleged breach of Spanish Law and its implications on the Credit Agreement

The PR argues that, because the Supplier's Spanish based sales companies have closed, Mr and Mrs K will not recover any amounts that are expected to be awarded by the Spanish court. But this is of no impact on the complaint because (1) I cannot see that the Supplier (i.e., company that entered into the Purchase Agreement) is itself the subject of a court judgment in Mr and Mrs K's favour nor can I see that the Lender has been party to any court proceedings and (2) even if he had a claim for something, there is no explanation as to why the Lender would be responsible to answer it.

Overall, given the facts and circumstances of this complaint, I am not persuaded that it would be fair or reasonable to uphold it for this reason.

Mr and Mrs K's Commission Complaint

I note that one of Mr and Mrs K's other concerns relates to alleged payments of commission by the Lender to the Supplier for acting as a credit broker and arranging the Credit Agreement. The Supreme Court's recent judgment Johnson v FirstRand Bank Ltd, Wrench v FirstRand Bank Ltd and Hopcraft v Close Brothers Ltd [2025] UKSC 33 ('Johnson, Wrench and Hopcraft') clarified the law on payments of commission – albeit in the context of car dealers acting as credit brokers. In my view, the Supreme Court's judgment sets out principles which appear capable of applying to credit brokers other than car dealer–credit brokers. At present, I do not know enough about the relevant arrangements in place at the Times of Sale. So, once I know more, I will finalise my findings on this complaint.

Conclusion

In conclusion, as things currently stand, I do not think that the Lender acted unfairly or unreasonably when it dealt with the relevant Section 75 claim(s), and if I put the issue of commission to one side for the time being, I am not persuaded that the Lender was party to a credit relationship with Mr and Mrs K under the Credit Agreement that was unfair to them for the purposes of Section 140A of the CCA – nor do I see any other reason why it would be fair or reasonable to direct the Lender to compensate them.

But, as I have already said, it is necessary to wait for information on the relevant arrangements (considered in Johnson, Wrench and Hopcraft) between the Lender and Supplier before finalising my thoughts on the merits of this complaint."

I gave both parties the opportunity of responding and providing any further information or argument before I made my final decision. The Lender responded and said it agreed with my PD.

The PR also responded on behalf of Mr and Mrs K and did not accept the PD and provided some further comments it wanted to be taken into account. It also raised, for the first time, an allegation that the payment of a commission by the Lender to the Supplier caused an unfair credit relationship.

Having read everything, I sent the following email to both parties:

"In my provisional decision, I noted that one of Mr and Mrs K's other concerns related to the alleged payment of commission by the Lender to the Supplier for acting as a credit broker and arranging the Credit Agreement. But, I said that the Supreme Court's pending (at that time) judgment on this issue may prove important to this complaint. So, I explained that I would not finalise my thoughts on this complaint until it had been handed down and I had considered its implications on this complaint, if there are any.

As that has now happened and I have considered it, I am outlining my thoughts on this issue in this letter so that both parties have the opportunity to respond before I finalise 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.

In my provisional decision, I explained that 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 I said that with that being the case, it is not necessary to set out that context in detail here. But, following my provisional decision, I would add that the following regulatory rules/guidance are also relevant:

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

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

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

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

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

- *Principle 6*
- *Principle 7*
- *Principle 8*

The Provision of Information by the Supplier at the Time of Sale

The PR says that a payment of commission from the Lender to the Supplier at the

Time of Sale should lead me to uphold this complaint because, simply put, information in relation to that payment went undisclosed at the Time of Sale.

As both sides already know, the Supreme Court handed down an important judgment on 1 August 2025 in a series of cases concerned with the issue of commission: Johnson v FirstRand Bank Ltd, Wrench v FirstRand Bank Ltd and Hopcraft v Close Brothers Ltd [2025] UKSC 33 ('Hopcraft, Johnson and Wrench').

The Supreme Court ruled that, in each of the three cases, the commission payments made to car dealers by lenders were legal, as claims for the tort of bribery, or the dishonest assistance of a breach of fiduciary duty, had to be predicated on the car dealer owing a fiduciary duty to the consumer, which the car dealers did not owe. A "disinterested duty", as described in Wood v Commercial First Business Ltd & ors and Business Mortgage Finance 4 plc v Pengelly [2021] EWCA Civ 471, is not enough.

However, the Supreme Court held that the credit relationship between the lender and Mr Johnson was unfair under Section 140A of the CCA because of the commission paid by the lender to the car dealer. The main reasons for coming to that conclusion included, amongst other things, the following factors:

1. *The size of the commission (as a percentage of the total charge for credit). In Mr Johnson's case it was 55%. This was "so high" and "a powerful indication that the relationship…was unfair" (see paragraph 327);*
2. *The failure to disclose the commission; and*
3. *The concealment of the commercial tie between the car dealer and the lender.*

The Supreme Court also confirmed that the following factors, in what was a non-exhaustive list, will normally be relevant when assessing whether a credit relationship was/is unfair under Section 140A of the CCA:

1. *The size of the commission as a proportion of the charge for credit;*
2. *The way in which commission is calculated (a discretionary commission arrangement, for example, may lead to higher interest rates);*
3. *The characteristics of the consumer;*
4. *The extent of any disclosure and the manner of that disclosure (which, insofar as Section 56 of the CCA is engaged, includes any disclosure by a supplier when acting as a broker); and*
5. *Compliance with the regulatory rules.*

From my reading of the Supreme Court's judgment in Hopcraft, Johnson and Wrench, it sets out principles which apply to credit brokers other than car dealer–credit brokers. So, when considering allegations of undisclosed payments of commission like the one in this complaint, Hopcraft, Johnson and Wrench is relevant law that I am required to consider under Rule 3.6.4 of the Financial Conduct Authority's Dispute Resolution Rules ('DISP').

But I do not think Hopcraft, Johnson and Wrench assists Mr and Mrs K in arguing that their credit relationship with the Lender was unfair to them for reasons relating to commission given the facts and circumstances of this complaint.

I have not seen anything to suggest that the Lender and Supplier were tied to one another contractually or commercially in a way that was not properly disclosed to Mr and Mrs K, 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 K into a credit agreement that cost disproportionately more than it otherwise could have.

I acknowledge that it is 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 have 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 is not necessary to make a formal finding on that because, even if the Lender and the Supplier failed to follow the relevant regulatory guidance at the Time of Sale, it is for the reasons set out below that I do not currently think any such failure is itself a reason to find the credit relationship in question unfair to Mr and Mrs K.

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 K entered into was not high. At £793.40 it was only 5% of the amount borrowed and 7.42% as a proportion of the charge for credit. So, had they known at the Time of Sale that the Supplier was going to be paid a flat rate of commission at that level, I am not currently persuaded that they either would not have understood that or would have otherwise questioned the size of the payment at that time. After all, Mr and Mrs K wanted Fractional Club membership and had no obvious means of their own to pay for it. And at such a low level, the impact of commission on the cost of the credit they needed for a timeshare they wanted does not strike me as disproportionate. So, I think they would still have taken out the loan to fund their purchase at the Time of Sale had the amount of commission been disclosed.

What is more, based on what I have seen so far, the Supplier's role as a credit broker was not 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 cannot see that the Supplier gave an undertaking – either expressly or impliedly – to put to one side its commercial interests in pursuit of that goal when arranging the Credit Agreement. And as it was not acting as an agent of Mr and Mrs K but as the supplier of contractual rights they obtained under the Purchase Agreement, the transaction does not strike me as one with features that suggest the Supplier had an obligation of 'loyalty' to them when arranging the Credit Agreement and thus a fiduciary duty.

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

So, given all of the factors I have looked at both here and in my provisional decision, and having taken all of them into account, I am still not persuaded that the credit relationship between Mr and Mrs K and the Lender under the Credit Agreement and related Purchase Agreement was unfair to them. And as things currently stand, I do not think it would be fair or reasonable that I uphold this complaint on that basis.

Commission: The Alternative Grounds of Complaint

While I have provisionally found that Mr and Mrs K's credit relationship with the Lender was not unfair to them for reasons relating to the commission arrangements between it and the Supplier, two of the grounds on which I came to that conclusion also constitute separate and freestanding complaints to Mr and Mrs K's complaint about an unfair credit relationship. So, for completeness, I have 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 K (i.e., secretly). And the second relates to the Lender's compliance with the regulatory guidance in place at the Time of Sale insofar as it was relevant to disclosing the commission arrangements between them.

However, for the reasons I set out above, I am not persuaded that the Supplier – when acting as credit broker – owed Mr and Mrs K a fiduciary duty. So, the remedies that might be available at law in relation to the payment of secret commission are not, in my view, available to them. And while it is possible that the Lender failed to follow the regulatory guidance in place at the Time of Sale insofar as it was relevant to disclosing the commission arrangements between it and the Supplier, I do not 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 at the Time of Sale had there been more adequate disclosure of the commission arrangements that applied at that time.

Overall Conclusion

So again, in conclusion, given the facts and circumstances of this complaint, I still do not think that the Lender acted unfairly or unreasonably when it dealt with Mr and Mrs K's Section 75 claim. I am also 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 or reasonable to direct the Lender to compensate them."

Neither party responded so I am now finalising my decision.

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 in the main relate to the issue of whether the credit relationship between Mr and Mrs K and the Lender was unfair. In particular, the PR has provided further comments in relation to whether the membership was sold to Mr and Mrs K as an investment at the Time of Sale.

As outlined in my PD, the PR originally raised various other points of complaint, all of which I addressed at that time. But it didn't make any further comments in relation to those in their response to my PD. Indeed, it hasn't said it disagrees 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 an unfair credit relationship?

The PR has highlighted under Section 140B (9) of the CCA, the burden of proof falls on the Lender to disprove the allegation that its relationship with Mr and Mrs K was unfair. I agree that this is correct, placing a burden on lenders during the process of litigation. That does not mean, though, that the Lender – or I – should take a claim at face value. There remains an onus on Mr and Mrs K to provide some evidence for the claim they are making, despite the overall burden of proof resting with the Lender, as was set out in the judgment in *Smith and another v Royal Bank of Scotland plc* [2023] UKSC 34 at paragraph 40. I also remind both parties that it is my role to make findings on what I consider to be fair and reasonable in all the circumstances of any given complaint.

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

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

I accepted in my PD that the membership may well have been marketed as an investment to Mr and Mrs K in breach of the prohibition in Regulation 14(3) of the Timeshare Regulations. I also explained that while the Supplier's sales processes left open the possibility that the sales representative may have positioned Fractional Club membership as an investment, it wasn't necessary for me to make a finding on this as it is not determinative of the outcome of the complaint. I explained that regulatory breaches do not automatically create unfairness and that such breaches and their consequences (if there are any) must be considered in the round, rather than in a narrow or technical way. The PR's response to my PD hasn't changed my view of this, and so whether the Supplier's breach of Regulation 14(3) led Mr and Mrs K to enter into the Purchase Agreement and the Credit Agreement remains an important consideration.

In my PD I explained the reasons why I didn't think any breach of Regulation 14(3) had led Mr and Mrs K to proceed with their purchase. In short, I was 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 K in the course of their complaint. I recognise the PR has interpreted Mr and Mrs K'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 objects to the approach I've taken in assessing this aspect of the complaint, believing that I have detracted from the judgment in *Shawbrook & BPF v FOS*[1] and the case law that contributed to it, by requiring Mr and Mrs K to have been "primarily or mainly motivated" by the investment element in order to uphold the complaint. But I did not make such a finding. I said that, in my view, Mr and Mrs K were highly motivated by the holiday options offered by the Supplier – which was a factor in my overall conclusion in light of all the available evidence that they would, on balance, have pressed ahead with their purchase of the Fractional Club membership even if there had been a breach of Regulation 14(3).

[1] 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').

In their witness statement, Mr and Mrs K say, *"the points associated with the fractional ownership does not give us huge value…",* so the PR says the investment element was their main interest. Mr and Mrs K went on to explain how holidays in the summer require more points so they used their points outside of summer and in the United Kingdom. Taken as a whole, I'm not convinced what Mr and Mrs K say supports the PR's belief that the investment element was key to Mr and Mrs K's decision to purchase.

So for the reasons given in my PD and above, I still do not think that any breach of Regulation 14(3), if there was one, was material to Mr and Mrs K's decision to purchase the Fractional Club membership.

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 Mr and Mrs K's Section 75 claim, and I am not persuaded that the Lender was party to a credit relationship with them under the Credit Agreement that was unfair to them for the purposes of Section 140A of the CCA. And having taken everything into account, I see no other reason why it would be fair or reasonable to direct the Lender to compensate them.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs K to accept or reject my decision before 20 February 2026.

Sameena Ali
Ombudsman