

## The complaint

Mrs W'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 an unfair credit relationship with her 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. The PR later complained that the timeshare provider ('the Supplier') did not disclose the commission it received from the Lender.

## What happened

Mrs W, along with her partner, was a Signature Collection member of a timeshare provider (the 'Supplier') having purchased membership in April 2016. But the product at the centre of this complaint is their membership of a timeshare that I'll call the Signature Collection membership that she purchased in December 2016 (the 'Time of Sale').

In December 2016, Mrs W and her partner entered into an agreement with the Supplier to buy 1820 Signature Collection membership points for £10,449 (the 'Purchase Agreement'). After trading in their previous membership, Mrs W ended up taking out a new loan with the Lender for £23,251, that included a consolidation amount of £12,802.

Signature Collection membership was asset backed – which meant it gave Mrs W and her partner 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 the membership term ends. It also offered guaranteed availability of the 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.

Mrs W – using a professional representative (the 'PR') – wrote to the Lender on 30 August 2022 (the 'Letter of Complaint') to raise a number of different concerns. As those concerns haven't changed since they were first raised, and as both sides are familiar with them, it isn't necessary to repeat them in detail here beyond the summary above.

The Lender didn't provide a response to the complaint within the eight-week period required by the regulator. So, the PR, on Mrs W's behalf, then referred the complaint to the Financial Ombudsman Service. It was assessed by an Investigator who, having considered the information on file, rejected the complaint on its merits.

Mrs W 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 on 3 November 2025 for both parties to consider. The Lender accepted my provisional without further comment. In their response to my provisional decision the PR, for the first time raised further issues, including a complaint about undisclosed commission and that there was a substantial contradiction in the purchase documentation. So, I issued a second provisional decision that dealt with the additional matters the PR raised.

The deadline for both parties to provide any further comments or evidence for me to consider was 22 January 2026. I said that unless the information changes my mind, my final decision was likely to be along the following lines.

***“Section 75 of the CCA: the Supplier’s misrepresentations at the Time of Sale***

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

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

*It was said in the Letter of Complaint that Signature Collection membership had been misrepresented by the Supplier at the Time of Sale because Mrs W and her partner 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 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 Signature Collection membership was misrepresented at the Time of Sale for one or both of those reasons, I don’t think it’s probable. They’re given little to none of the colour or context necessary to demonstrating that the Supplier made false statements of existing fact and/or opinion. And as there isn’t any other evidence on file to support the suggestion that Signature Collection membership was misrepresented for these reasons, I don’t think it was.*

*So, while I recognise that Mrs W - and the PR - have concerns about the way in which 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 an unfair credit relationship?***

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

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

- 1. The standard of the Supplier's commercial conduct – which includes its sales and marketing practices at the Time of Sale along with any relevant training material;*
- 2. The provision of information by the Supplier at the Time of Sale in relation to Signature Collection membership, 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 Mrs W and the Lender given her circumstances at the Time of Sale.*

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

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

*The PR says, for instance, that the right checks weren't carried out before the Lender lent to Mrs W. 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 W was actually unaffordable before also concluding that she lost out as a result and then consider whether the credit relationship with the Lender was unfair to her for this reason. But from the information provided, I am not satisfied that the lending was unaffordable for Mrs W.*

*Connected to this is the suggestion by the PR that the Credit Agreement was arranged by an unauthorised credit broker, the upshot of which is to suggest that the Lender wasn't permitted to enforce the Credit Agreement. However, it looks to me like Mrs W 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 Signature Collection membership. And as the lending doesn't look like it was unaffordable for her, even if the Credit Agreement was arranged by a broker that didn't have the necessary permission to do so (which I make no formal finding on), I can't see why that led to Mrs W experiencing a financial loss – such that I can say that the credit relationship in question was 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 loan wasn't arranged properly.*

*The PR also says that there was one or more unfair contract terms in the Purchase Agreement. But as I can't see that any such terms were operated unfairly against Mrs W in practice, nor that any such terms led her to behave in a certain way to her detriment, I'm not persuaded that any of the terms governing Signature Collection membership are likely to have led to an unfairness that warrants a remedy.*

*I acknowledge that Mrs W says she felt bombarded with so much information on the day of the sale without time to digest and process the contents of the information being presented and shared. But she says little about what was said and/or done by the Supplier during their sales presentations that made her and her partner feel as if they had no choice but to upgrade their existing Fractional Club membership to the Signature Collection 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. Moreover, they did go on to upgrade their membership – which I find difficult to understand if the reason they went ahead with the purchases in question was because they were pressured into them. And with all of that being the case, there is insufficient evidence to demonstrate that Mrs W and the joint owner made the decision to purchase Signature Collection membership because their ability to exercise that choice was significantly impaired by pressure from the Supplier.*

*Overall, therefore, I don't think that Mrs W's credit relationship with the Lender was 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 relationship with the Lender was unfair to them. And that's the suggestion that Signature Collection membership was marketed and sold to her and her partner 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 W's Signature Collection 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 Signature Collection 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 Mrs W was told by the Supplier that Signature Collection 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 Mrs W 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 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 Signature Collection. They just regulated how such products were marketed and sold.*

*To conclude, therefore, that the Signature Collection membership was marketed or sold to Mrs W as an investment in breach of Regulation 14(3), I have to be persuaded that it was more likely than not that the Supplier marketed and/or sold membership as an investment, i.e. told Mrs W or led her to believe that Signature Collection membership offered her and her partner 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 Signature Collection 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 Signature Collection as an 'investment' or quantifying to prospective purchasers, such as Mrs W, 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 Signature Collection membership as an investment. So, I accept that it's equally possible that Signature Collection membership was marketed and sold to Mrs W 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.*

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

*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 Mrs W 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 Mrs W and the Lender that was unfair to her 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.*

*When the PR referred Mrs W's complaint to our service, the Letter of Complaint they provided didn't provide any testimony or supporting evidence in relation to this allegation. The submissions made by the PR didn't include any evidence or commentary that Mrs W had previously purchased Fractional Club membership six-months before upgrading to the Signature Collection.*

*Signature Collection membership provides additional benefits when compared to Fractional Club membership - including guaranteed usage of luxury accommodation, the ability to convert the use of weeks to points and an enhanced welcome pack and access to other services on site. So, I think it's reasonable for me to give some weight that these additional*

benefits were part of Mrs W's motivation to upgrade from the Fractional Club membership as quickly as she and the joint owner did.

I've also seen that Mrs W wrote to the Supplier in March 2018 and said that she and the joint purchaser wanted to know how they could dissolve their Signature Collection membership. This letter refers to their unsuccessful attempt to sell their share of the Allocated Property on the open market, but it doesn't make any reference to them expecting to make a profit from the sale.

It was only after the Investigator issued their view, and after the judgment in 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') was handed down, that Mrs W recalled that the Supplier led her to believe that Signature Collection membership offered the prospect of a financial gain.

In April 2024, in response to the Investigator's view, the PR provided some testimony from Mrs W about what she recalled from the Time of Sale. Mrs W said, in her witness statement:

*"The property was sold as an investment comprising of a holiday home for a week a year and at the end of the term/agreement, once the property is sold, the profits will be shared amongst the individuals attached to each property....The main take away was that it was going to be a win win situation where one could enjoy the holiday home for the week in question, in less busy times, would have the opportunity of paying minimal fee to have another weeks holiday, but the ultimate end result was the profit at the end of the agreement."*

Indeed, as there isn't any other evidence on file to corroborate Mrs W's very recent evidence about her and her partner's motivations at the Time of Sale, there seems to me to be a very real risk that Mrs W's recollections were coloured by the judgment in Shawbrook & BPF v FOS. And with that being the case, I'm not persuaded that I can give her written recollections the weight necessary to finding that the credit relationship in question was unfair for reasons relating to a breach of the relevant prohibition.

That doesn't mean Mrs W and her partner weren't interested in a share in the Allocated Property. After all, that wouldn't be surprising given the nature of the product at the centre of this complaint. But, for the reasons I've provided, I'm not persuaded the evidence supports that a breach of Regulation 14(3) by the Supplier was likely to have been material to the decision Mrs W ultimately made.

On balance, therefore, even if the Supplier had marketed or sold the Signature Collection membership as an investment in breach of Regulation 14(3) of the Timeshare Regulations, I am not persuaded that Mrs W's decision to purchase Signature Collection 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 she and her partner 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 Mrs W and the Lender was unfair to her 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 a payment of commission from the Lender to the Supplier at the Time of Sale should lead me to uphold this complaint because, simply put, information in relation to that payment went undisclosed at the Time of Sale.

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

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

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

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

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

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

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

*But I don't think Hopcraft, Johnson and Wrench assists Mrs W in arguing that her credit relationship with the Lender was 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 W, 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 W into a credit agreement that cost disproportionately more than it otherwise could have.*

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

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

*Based on what I've seen so far, the Supplier's role as a credit broker wasn't a separate service and distinct from its role as the seller of timeshares. It was simply a means to an end in the Supplier's overall pursuit of a successful timeshare sale. I can't see that the Supplier gave an undertaking – either expressly or impliedly – to put to one side its commercial interests in pursuit of that goal when arranging the Credit Agreement. And as it wasn't acting as an agent of Mrs W but as the supplier of contractual rights she obtained under the Purchase Agreement, the transaction doesn't strike me as one with features that suggest the Supplier had an obligation of 'loyalty' to her when arranging the Credit Agreement and thus a fiduciary duty.*

*What's more, in stark contrast to the facts of Mr Johnson's case, as I understand it, the Lender didn't pay the Supplier any commission at the Time of Sale. And with that being the case, even if there were information failings at that time and regulatory failings as a result (which I make no formal finding on), I'm not currently persuaded that the commission arrangements between the Supplier and the Lender were likely to have led to a sufficiently extreme inequality of knowledge that rendered the credit relationship unfair to Mrs W.*

*I will also address the PR's point regarding the apparent ambiguity in the proposed sale date of the Allocated Property. The PR suggests that a delayed sale date could lead to an unfairness to Mrs W in the future, as any delay could mean a delay in the realisation of her and her partner's share in the Allocated Property.*

*It does appear that the proposed date for the commencement of the sales process, as set out on the owners' certificate, is 31 December 2034. This same date is set out under point 1 of the Members Declaration, which has been initialled and signed as being read by Mrs W. The PR says this date indicates that the membership has a term of 17 years. The ambiguity identified by the PR is that in the Information Statement provided as part of the purchase documentation it says the following:*

*"The Owning Company will retain such Allocated Property until the automatic sale date in **19 years time** or such later date as is specified in the Rules or the Fractional Rights Certificate." (bold my emphasis).*

*It seems clear to me that the commencement date for the start of the sales process is 31 December 2034. This actual date is repeated in the sales documentation as I've set out above.*

*So, I don't intend saying that this is a reason to find the credit relationship unfair and uphold this complaint.*

### **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 relationship between Mrs W and the Lender under the Credit Agreement and related Purchase Agreement was 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.*

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

*The PR argues that, because the Purchase Agreement was unlawful under Spanish law in light of certain information failings by the Supplier, I should treat that Agreement and the Credit Agreement as rescinded by Mrs W and award her compensation accordingly – in keeping with the judgment of the UK's Supreme Court in *Durkin v DSG Retail* [2014] UKSC 21 ('Durkin').*

*However, as the Lender hasn't been party to any court proceedings in Spain, and as I can't see that the Supplier (i.e., company that entered into the Purchase Agreement) is itself the subject of a Spanish court judgment in Mrs W's favour, it seems to me that there is an argument for saying that the Purchase Agreement is valid under English law for the purposes of Durkin.*

*I also note that the Purchase Agreement is governed by English law. So, it isn't at all clear that Spanish law would be held relevant if the validity of the Purchase Agreement were litigated between its parties and the Lender in an English court. For example, in *Diamond Resorts Europe and Others* (Case C-632/21), the European Court of Justice ruled that, because the claimant lived in England and the timeshare contract governed by English law, it was English law that applied, not Spanish, even though the latter was more favourable to the claimant in ways that resemble the matters seemingly relied upon by the PR.*

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

*The Lender wasn't a party to the proceedings the PR has referred to, so its' rights under the Credit Agreement have not been determined.*

*I still think that the Purchase Agreement is governed by English law for the reason already set out in my first PD. The PR has pointed to a different decision of the European Court of Justice that points the other way. But in the absence of any authorities under English law, I'm still not persuaded that (1) the Purchase Agreement, properly governed by English law, could be avoided following the Spanish Judgment to which the PR refers and (2) that the Credit Agreement was also something that could be successfully avoided.*

*What's more, as both the PR and the Lender have provided submissions that support Mrs W has gone some way to taking advantage of the Purchase and Credit Agreement, an English court might hesitate to uphold a claim for rescission of either Agreement because there are equitable reasons to do so.*

*Overall, therefore, in the absence of a successful English court ruling on a timeshare case paid for using a point-of-sale loan on similar facts to this complaint, and given the facts and circumstances of this complaint, I'm not persuaded that it would be fair or reasonable to uphold it for this reason.*

### ***My provisional decision***

*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 W's Section 75 claim. I am not persuaded that the Lender was party to a credit relationship with her under the Credit Agreement and related Purchase Agreement that was 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."*

In its response The Lender says that it accepts my provisional decision, but adds that its records show that it paid the Supplier a commission of £581.35. I will address this in my final decision, as I'm satisfied that it does not affect the outcome I've reached.

The PR hasn't provided any further comments for me to consider.

### **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.

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.

Although the Lender now says it paid a commission of £581.35 to the Supplier at the Time of Sale, I'm satisfied that - even if this is the case - this does not change the outcome of my provisional decision dated 22 December 2025. I will now explain why.

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

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

In stark contrast to the facts of Mr Johnson's case, which I referred to in my provisional decision, the amount of commission the Lender says it paid to the Supplier for arranging the Credit Agreement that Mrs W entered into wasn't high. At £581.36, it was only 2.5% of the amount borrowed and even less than that (2.31%) as a proportion of the charge for credit. So, had Mrs W known at the Time of Sale that the Supplier was going to be paid a flat rate of commission at that level, I'm not 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 W and her partner 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 she needed for a timeshare they wanted doesn't strike me as disproportionate. So, I think she would still have taken out the loan to fund the purchase at the Time of Sale had the amount of commission been disclosed.

Taking all of this into account, I've decided to adopt my provisional decision dated 22 December 2025 as my final decision.

### **My final decision**

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 W's Section 75 claim. I am not persuaded that the Lender was party to a credit relationship with her under the Credit Agreement and related Purchase Agreement that was 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.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs W to accept or reject my decision before 4 March 2026.

Paul Lawton  
**Ombudsman**