DRN-6109725

## The complaint

Mr D and Mrs D 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.

## What happened

Mr D and Mrs D were members of a timeshare provider (the 'Supplier') – having purchased a timeshare product from them previously. 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 20 February 2014 (the 'Time of Sale'). They entered into an agreement with the Supplier to buy 1220 fractional points at a cost of £20,137 (the 'Purchase Agreement').

Fractional Club membership was asset backed – which meant it gave Mr D and Mrs D 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 D and Mrs D paid for their Fractional Club membership by taking finance of £8187 from the Lender (the 'Credit Agreement') having received a trade in value for their previous Fractional Club timeshare of £11,950 towards this purchase from the Supplier.

Mr D and Mrs D – using a professional representative (the 'PR') – wrote to the Lender on 20 April 2017 (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 dealt with Mr D and Mrs D's concerns as a complaint and rejected it on every ground in a letter dated 03 July 2017. Mr D and Mrs D later changed representative to a new representative (the 'Rep').

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

I issued my provisional findings to the parties on 15 December 2025 with a deadline for response of 29 December 2025. In my provisional decision, I said (in smaller font and italics for clarity):

*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.*

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

*It was said in the Letter of Complaint that Fractional Club membership had been misrepresented by the Supplier at the Time of Sale because Mr D and Mrs D were:*

1. *Told that they had purchased an investment that would appreciate in value.*
2. *Promised a return on their investment because they were told that they would own a share in a property that would increase in value.*
3. *Told that they could sell their membership to the Supplier or to third parties at a profit.*
4. *Made to believe that they would have access to accommodation all year round.*

*However, neither points 1 nor 2 strike me as misrepresentations even if such representations had been made by the Supplier (which I make no formal finding on). Telling prospective members that they were investing their money because they were buying a fraction or share of one of the Supplier's properties was not untrue. And even if the Supplier's sales representatives went further and suggested that the share in question would increase in value, perhaps considerably so, that sounds like nothing more than a honestly held opinion as there isn't any accompanying evidence to persuade me that the relevant sales representative(s) said something that, while an opinion, amounted to a statement of fact that they did not hold or could not have reasonably held.*

*As for points 3 and 4, while it's possible that Fractional Club 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 Fractional Club membership was misrepresented for these reasons, I don't think it was.*

*So, while I recognise that Mr D and Mrs D - and the PR - have concerns about the way in which Fractional Club 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 75 of the CCA: the Supplier's Breach of Contract***

*I have already summarised how Section 75 of the CCA works and why it gives consumers a right of recourse against a lender. So, it is not necessary to repeat that here other than to say that, if I find that the Supplier is liable for having breached the Purchase Agreement, the Lender is also liable.*

*Having considered the letter of claim I'm not persuaded that any breach of contract claim was made within that letter. I've also considered the response to our Investigator's assessment and I'm not persuaded such an allegation is made within that document or indeed in later representations. That is, of course, other than allegations of breaches of regulations-which I shall deal with later. And it would seem likely that if there were allegations of breach of contract made recently the Lender would have a 'like' defence under Section 9 of the Limitation Act 1980.*

*So, from the evidence I have seen, I do not think the Lender is liable to pay Mr D and Mrs D any compensation for a breach of contract by the Supplier. And with that being the case, I do not think the Lender acted unfairly or unreasonably by not redressing any such 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 Fractional Club 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 Mr D and Mrs D 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 Fractional Club 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 Mr D and Mrs D and the Lender given their circumstances at the Time of Sale.*

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

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

*The PR said, for instance, that the Lender irresponsibly lent to Mr D and Mrs D. 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 Mr D and Mrs D 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 the Mr D and Mrs D.*

*I acknowledge that Mr D and Mrs D 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 it is worth remembering that they had previously explained that they had purchased a similar timeshare from the same Supplier. With all of that being the case, there is insufficient evidence to demonstrate that Mr D and Mrs D 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 don't think that Mr D and Mrs D credit relationship with the Lender was rendered unfair to their under Section 140A for any of the reasons above. But there is another reason, perhaps the main reason, why the Rep says the credit relationship with the Lender was unfair to them. And that's the suggestion that Fractional Club membership was marketed and sold to their as an investment in breach of prohibition against selling timeshares in that way.*

*<u>The Supplier's alleged breach of Regulation 14(3) of the Timeshare Regulations</u>*

*The Lender does not dispute, and I am satisfied, that Mr D and Mrs D'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 Rep says that the Supplier did exactly that at the Time of Sale – saying, in summary, that Mr D and Mrs D 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 D and Mrs D the prospect of a financial return – whether or not, like all investments, that was more than what they first put into it. But it is important to note at this stage that the fact that Fractional Club membership included an investment element did not, itself, transgress the prohibition in Regulation 14(3). That provision prohibits the marketing and selling of a timeshare contract as an investment. It doesn't prohibit the mere existence of an investment element in a timeshare contract or prohibit the marketing and selling of such a timeshare contract per se.*

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

*To conclude, therefore, that Fractional Club membership was marketed or sold to Mr D and Mrs D 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 their as an investment, i.e. told their 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 D and Mrs D, 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's equally possible that Fractional Club membership was marketed and sold to Mr D and Mrs D 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 Mr D and Mrs D have been rendered unfair to their 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 Mr D and Mrs D 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 D and Mrs D and the Lender that was unfair to their 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. I say this because I don't think I can place any significant weight on the statement dated April 2017 Mr D and Mrs D have provided as to their motivations during the sale. This is due to a number of concerns I have about it.*

*We understand that the PR used a questionnaire as the basis for drafting such statements and although I've not seen a copy of Mr D and Mrs D's questionnaire, I have seen the questionnaire on other cases and I know the PR here accepts that this practice took place. I have serious reservations about the way in which the PR went about gathering this evidence. Here, rather than asking for purchasers such as Mr D and Mrs D to provide their own recollections of the sale, several possible representations made by the Supplier have been suggested to them already. This runs the real and serious risk that this is not an accurate reflection of their memories, as a list of prompted responses suggesting an answer for them could very well contaminate their honestly held memories of the sale.*

*I also note some comments made in Mr D and Mrs D's statements clearly were not true. For example Mr D and Mrs D has signed this document which says "Before that meeting, we did not have a need and never sort to buy a (the Supplier) timeshare." However Mr D and Mrs D had purchased a timeshare of almost identical nature to that purchased here previously from this same Supplier. And I also note that within the statement Mr D and Mrs D later contradict this assertion by stating "we affirm we owned a (the Supplier) timeshare before." It also makes mention of Mr D's and Mrs D's speaking ""Pigeon Spanish" which relevance's isn't expanded on (and doesn't seem overly relevant bearing in mind the presentations and documents were all in English). So I am mindful the possibility that this statement has been polluted with someone else's recollections or assertions that the PR wanted to make. It is also clear from the evidence that in this purchase Mr D and Mrs D received a substantial discount on the price of the membership for trading in their previous timeshare. Yet Mr D and Mrs D's statement doesn't mention this trade in or set out clearly their history of purchasing timeshare from this Supplier previously. I also note the statement makes certain assertions which follow the format of the questionnaire I know the Rep used. And these provide no colour, surrounding narrative or depth to the assertions Mr D and Mrs D purport to make about what happened during the sale. So I don't think I can place significant weight on this document in my decision making.*

*I've also considered Mr D and Mrs D's statement dated November 2023 which largely repeats the vague assertions made in the earlier statement (e.g. para 23). However it does make far more detailed comment about it being sold as an investment to them in relation to the prior timeshare purchase (which isn't covered by this complaint), so much so that the holiday nature of the membership gets limited mention. And it essentially goes on to say the same happened again in the sale in this case. This statement is very different compared to the original statement and I must take into account it was given several years later than the original statement and approaching a decade after the events at hand. And I cannot discount the possibility that this statement, having been made after a relevant court decision regarding such timeshares had been published, may be innocently influenced by that decision. Accordingly taking everything into account I think the prospect of a financial gain from Fractional Club membership was not an important and motivating factor when Mr D and Mrs D decided to go ahead with this purchase.*

*That doesn't mean they weren't interested in a share in the Allocated Property. After all, that wouldn't be surprising given the nature of the product at the centre of this complaint. But as Mr D and Mrs D themselves don't persuade me that their purchase was motivated by the share in the Allocated Property and the possibility of a profit, I don't think a breach of Regulation 14(3) by the Supplier was likely to have been material to the decision Mr D and Mrs D 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 D and Mrs D'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 D and Mrs D and the Lender was unfair to their even if the Supplier had breached Regulation 14(3).*

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

*The PR argued 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 Mr D and Mrs D and award their 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 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.*

*What's more, as Mr D and Mrs D have 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.*

I then issued an addendum to my provisional decision on the subject of commission saying (similarly changed font for clarity):

*Did the commission arrangements render the credit relationship unfair?*

*My reading of the Supreme Court's judgment in Hopcraft, Johnson and Wrench is that it sets out principles which can apply to credit brokers other than car dealer–credit brokers. So I've taken into account those principles when considering the allegations of undisclosed payments of commission in this complaint.*

*In Hopcraft, Johnson and Wrench the Supreme Court ruled that, in each of the three cases, 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:*

- *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"[1];*
- *The failure to disclose the commission; and*
- *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:*

- *The size of the commission as a proportion of the charge for credit;*
- *The way in which commission is calculated (a discretionary commission arrangement, for example, may lead to higher interest rates);*
- *The characteristics of the consumer;*
- *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*
- *Compliance with the regulatory rules.*

*After careful consideration, I don't think Hopcraft, Johnson and Wrench assists Mr D and Mrs D 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 haven't seen anything to suggest the Lender and Supplier were tied to one another contractually or commercially in a way that wasn't properly disclosed to Mr D and Mrs D. Nor have I seen anything that persuades me that the commission arrangements between them gave the Supplier a choice over the interest rate that led Mr D and Mrs D into a credit agreement that cost disproportionately more than it otherwise could have.*

*I recognise that it's possible 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 noted in my provisional decision, case law on section 140A makes clear that regulatory breaches do not automatically lead to an unfair credit relationship, and that such breaches and any consequences must be considered in the round rather than in a narrow or technical way.*

*With that being the case, even if the Lender and the Supplier failed to follow the relevant regulatory guidance at the Time of Sale, I'm not minded to think any such failure is itself a reason to find the credit relationship in question unfair to Mr D and Mrs D. I say this for the following reasons.*

*In stark contrast to the facts in Mr Johnson's case, the amount of commission paid by the Lender to the Supplier for arranging Mr D and Mrs D's Credit Agreement wasn't high. At £163.74, it was only 1.98% of the amount borrowed and even less than that (1.08%) as a proportion of the charge for credit, which is the calculation the Supreme Court used.*

*Had Mr D and Mrs D known at the Time of Sale that the Supplier was going to be paid a flat rate of commission at this level, I'm not currently persuaded that they either wouldn't have understood that or would have otherwise questioned the size of the payment at that time. After all, Mr D and Mrs D 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 doesn't 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's more, based on what I've seen so far, the Supplier's role as a credit broker wasn't a separate service and distinct from its role as the seller of timeshares. It was simply a means to an end in the Supplier's overall pursuit of 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. As it wasn't acting as an agent of Mr D and Mrs D but as the supplier of contractual rights they obtained under the Purchase Agreement, the transaction*

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[1] *Hopcraft, Johnson and Wrench* (para 327).

*doesn't 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.*

*I don't consider it necessary for me to take into account any commission the Supplier might have paid to its sales representatives, or that this should be disclosed or factored into any calculation used to determine unfairness. Even if any such arrangement was in place (and I make no finding in this respect), its disclosure and/or payment would be further removed from any obligations the Supplier might have held, and even less likely to have an impact on Mr D and Mrs D's decision to enter into the Credit Agreement.*

*Overall, I'm don't intend to conclude 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 D and Mrs D.*

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

*Commission: alternative grounds of complaint*

*Although the PR's submissions expressed the view that payment of commission made the financial arrangements unfair, I'm conscious that there might be some alternative grounds that could constitute separate and freestanding complaints to Mr D and Mrs D's allegation of an unfair credit relationship.*

*The first ground relates to whether the Lender is liable for the dishonest assistance of a breach of fiduciary duty by the Supplier because the Supplier took a payment of commission from the Lender without telling Mr D and Mrs D (that is, secretly). But given I'm not persuaded the Supplier – when acting as credit broker – owed Mr D and Mrs D a fiduciary duty, I can't see how I could properly uphold on this ground.*

*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 it and the Supplier. As I've said, it's possible that the Lender failed to follow the relevant regulatory guidance. But I don't think any such failure on the Lender's part leads to my awarding compensation to Mr D and Mrs D because, for the reasons I also set out above, I think Mr D and Mrs D would still have taken out the loan to fund their purchase at the Time of Sale had the commission arrangements been adequately disclosed at that time.*

I didn't find any of the arguments put forward demonstrated that the credit agreement between Mr D and Mrs D and the Lender were unfair to them under section 140A of the CCA. Absent of any other reason why it would be fair or reasonable to direct the Lender to compensate them, I said I didn't propose to uphold the complaint.

**Responses to my provisional findings**

The Lender accepted my provisional decision. The PR asked for copies of the evidence which was supplied on 24 December 2025. The PR also asked for an extension to respond of 14 days (from the provisional decision deadline). On 16 December 2025 our investigator said that I'd agreed an extension until 16 January 2026 (which is longer than that requested). No representations have been received from the PR and its now eleven days after the deadline. Having reviewed the positions of the parties, I'm now proceeding with my final decision.

**The legal and regulatory context**

The parties are doubtless familiar with the DISP 3.6.4R provisions and the legal and regulatory context relevant to this complaint, which has been shared in several hundred decisions our service has published on very similar complaints. But noting the aspects relating to payment of commission, 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
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**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.

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

After considering the case afresh and having regard for the positions of the respective parties and having considered that the PR here has received a significant extension which has passed some time ago, I see no reason to delay matters further. I find the positions of the parties offers no persuasive reason to depart from the conclusions I've previously set out. Accordingly this complaint does not succeed for the reasons given above.

**Overall Conclusion**

In conclusion I do not think that the Lender acted unfairly or unreasonably when it dealt with the relevant Section 75 claim, I am not persuaded that the Lender was party to a credit relationship with Mr D and Mrs D 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.

**My final decision**

For the reasons given I do not uphold this complaint. The Lender has nothing further to do on this matter.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D and Mrs D to accept or reject my decision before 24 February 2026.

Rod Glyn-Thomas
**Ombudsman**