DRN-6112890

Financial Ombudsman Service

The complaint

Mrs E complains Mitsubishi HC Capital UK Plc (the "Lender") has failed to honour a claim under Section 75 of the Consumer Credit Act 1974 (the "CCA") and has participated in an unfair credit relationship with her under Section 140A of the CCA.

Mrs E is represented in her complaint by a professional representative ("PR").

What happened

I issued a provisional decision on Mrs E's complaint on 6 January 2026, in which I set out the background to the matter and my provisional findings on it. A copy of that provisional decision is attached to and forms part of this final decision, so it's not necessary for me to go over the details again. To summarise:

- The complaint relates to a purchase of a timeshare (the "Purchase Agreement") made on 29 April 2019 (the "Time of Sale"). The purchase was of a membership in the Supplier's "Fractional Club". Mrs E bought 1,040 points in the Fractional Club, which could be used to book holiday accommodation annually.This type of timeshare was also asset-backed, meaning it included a share in the future sale proceeds of a specific timeshare apartment named on Mrs E's purchase paperwork (the "Allocated Property"). The purchase cost £14,430.

- The Supplier arranged a loan (the "Credit Agreement") with the Lender for the £14,430 purchase price. This was repayable over 180 months at £166.67 per month.

- In January 2022, through PR, Mrs E complained to the Lender, seeking to find it responsible for the Supplier having mis-sold the timeshare and associated loan. The individual mis-selling concerns raised by PR can be found in the table below, but broadly-speaking they included misrepresentations and breaches of contract for which Mrs E sought to hold the Lender liable under Section 75 of the CCA, and matters which were alleged to have rendered the credit relationship between her and the Lender unfair under Section 140A of the CCA.

In my provisional decision I said I didn't think the complaint should be upheld. The full reasons can be found in the appended document, but again to summarise:

- The Lender had not been unfair or unreasonable in declining Mrs E's Section 75 claim for misrepresentation or breach of contract because:
    - Some of the alleged misrepresentations were in fact true statements or statements of opinion which there was no evidence to demonstrate were not honestly held.
    - There was insufficient persuasive evidence that the Supplier had misrepresented the availability of accommodation through the Fractional Club membership.

- The remaining alleged misrepresentations were too vague and lacking in colour and context to be able to draw a positive conclusion that the Supplier had made false statements of specific fact to Mrs E.
- There was a lack of specific detail from Mrs E regarding alleged breaches of contract by the Supplier (for example, of a specific occasion where the contract was alleged to have been breached), which would be necessary to make a successful claim for breach of contract.

- The Lender had not participated in a credit relationship with Mrs E that was unfair to her because:
    - Regardless of whether or not the Lender had carried out appropriate creditworthiness checks, there was a lack of evidence the loan had been unaffordable for Mrs E at the time.
    - It was not the case that the credit broker which had arranged the Credit Agreement had not held the necessary permissions from the Financial Conduct Authority.
    - I couldn't see that any allegedly unfair terms in the purchase agreement with the Supplier had been operated unfairly against Mrs E or would be operated in such a way in the future.
    - Mrs E hadn't been able to explain specifically what the Supplier had done which had made her feel as though she had no choice but to make the purchase in question, and if she had been pressured, I would have expected her to have cancelled the purchase during the cooling off period, which she had not. Mrs E had argued the cooling off period wasn't long enough, but I noted it was the length required by the law.
    - It was possible the Supplier had breached Regulation 14(3) of the Timeshare Regulations by marketing the timeshare to Mrs E as an investment, but it was necessary to show that any such breach had been material to Mrs E's decision to purchase the Fractional Club membership. I wasn't convinced, based on Mrs E's own testimony, that this had been the case, because:
        - Mrs E's original witness statement had focused heavily on various other concerns she had about the timeshare and the way the Supplier had sold it to her. While she had mentioned getting the impression it was an investment, even in the paragraph in which she had mentioned this, her focus was on the Supplier having misled her over the financing arrangements.
        - We had received a changed version of Mrs E's witness statement later, which had changed the paragraph referred to so that it gave more emphasis to the Supplier having *told* Mrs E the timeshare was an investment, and that she could make a *profit* from it. I had concerns about the timing of these changes, which appeared to have come about after a certain court case relating to fractional timeshares. These concerns were not put to rest by PR's explanations after it was asked to comment. I felt I could place no weight on the changed statement as a result.
    - I had considered the commission arrangements between the Lender and the

Supplier, but did not think that these had led to an unfair credit relationship between Mrs E and the Lender in respect of the Credit Agreement, or were otherwise a reason for the Lender to compensate Mrs E.

- The Supplier had not had a fiduciary duty to Mrs E when arranging the Credit Agreement. In other words, it had had no duty of "loyalty" to her.
- The commission had been a flat rate commission equal to 4% of the amount of credit – or £577.20. This was not an excessive commission.
- There had been nothing else about the commercial ties between the Lender and Supplier – such as the Lender having a right of first refusal over Mrs E's business – which could have led to the credit relationship being rendered unfair to her.

I invited the parties to the complaint to respond to my provisional decision. The Lender didn't respond to the provisional decision. PR didn't agree with the provisional decision. It said there was nothing more it could add regarding Mrs E's witness statement, but that it had further submissions to make on the matter of the commission paid by the Lender. It argued:

- It wasn't just the amount of the commission which was relevant to the question of whether or not there was an unfair credit relationship within the meaning of Section 140A of the CCA. It was necessary to take into account the arrangements in their entirety, as the courts had in relevant cases.
- There had been a consistent pattern of mis-selling behaviour by the Supplier: improperly selling the timeshare as an investment, failing to carry out affordability checks, brokering the Credit Agreement without the proper regulatory permissions, using unfair terms in the Purchase Agreement, and putting Mrs E under pressure. When combined and considered together along with the lack of transparency over commission, the conclusion had to be that the credit relationship between Mrs E and the Lender had been rendered unfair to her.

PR also said it had identified a significant contradiction in the purchase documentation – that Mrs E's fractional rights certificate showed her membership would last 15 years, while the "Information Statement" which was provided with the Purchase Agreement, said it would be 19 years or later. PR said this was another example of an unfair term, and it could unfairly delay when Mrs E would receive her fraction of the proceeds of the sale of the Allocated Property.

The case has now been returned to me once more to decide.

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 again 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.

PR's comments in response to the provisional decision relate only to the issue of whether the credit relationship between Mrs E and the Lender was unfair. In particular, PR has provided further comments in relation to the matter of the commission paid by the Lender to the Supplier. It has also now argued for the first time that a contradiction in the documents dating to around the Time of Sale is something which could have led to an unfair credit relationship.

As outlined in my provisional decision, 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 its response to my provisional decision. 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 provisional decision. So, I'll focus here on PR's points raised in response.

PR's further comments regarding commission and the Supplier's general sales practices

Prior to sending my provisional decision to both parties, I wrote to PR to explain the stance I was minded to take regarding the matter of commission.

PR wrote back to me with what I consider to be the same arguments it has now raised in response to my provisional decision as I've outlined above. I addressed those arguments in the provisional decision and it isn't necessary for me to address them again. I'll say only that my conclusions remain unchanged.

The alleged contradiction within the purchase documentation

I have considered PR's point regarding the apparent ambiguity in the proposed sale date of the Allocated Property. PR suggests that a delayed sale date could lead to an unfairness to Mrs E in the future, as any delay could mean a delay in the realisation of her 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 2035. This same date is set out under point 1 of the Members Declaration, which has been initialled and signed as being read by Mrs E. This date indicates that the membership has a term of 16 years. The ambiguity identified by 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 2036. This actual date is repeated in the sales documentation as I've set out above.

So, I can't see that this is a reason to find the credit relationship unfair and uphold this complaint.

My final decision

For the reasons explained above, and in the appended provisional decision, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs E to accept or reject my decision before 25 February 2026.

Will Culley
Ombudsman

COPY OF PROVISIONAL DECISION

I've considered the relevant information about this complaint.

Another Ombudsman has already issued a provisional decision on this complaint, in which she explained her provisional findings on all matters complained about apart from allegations relating to the payment of commission. Because this Ombudsman no longer works for the Financial Ombudsman Service, the case has been passed to me to decide. I think it's appropriate in the circumstances for me to issue a further provisional decision setting out my position on the complaint.

The deadline for both parties to provide any further comments or evidence for me to consider is **20 January 2026**. Unless the information changes my mind, my final decision is likely to be along the following lines.

If I don't hear from Mrs E, or if they tell me they accept my provisional decision, I may arrange for the complaint to be closed as resolved without a final decision.

The complaint

Mrs E complains Mitsubishi HC Capital UK Plc (the "Lender") has failed to honour a claim under Section 75 of the Consumer Credit Act 1974 (the "CCA") and has participated in an unfair credit relationship with her under Section 140A of the CCA.

Mrs E is represented in her complaint by a professional representative ("PR").

What happened

This complaint relates to a timeshare purchase made by Mrs E from a timeshare provider (the "Supplier") on 29 April 2019. This appears to have been Mrs E's first and only purchase from the Supplier. I've outlined the basic details below:

- The purchase made on 29 April 2019 (the "Time of Sale") was of a membership in the Supplier's "Fractional Club". Mrs E bought 1,040 points in the Fractional Club, which could be used to book holiday accommodation annually (the "Purchase Agreement"). This type of timeshare was also asset-backed, meaning it included a share in the future sale proceeds of a specific timeshare apartment named on Mrs E's purchase paperwork (the "Allocated Property"). The purchase cost £14,430.

- The Supplier arranged a loan (the "Credit Agreement") with the Lender for the £14,430 purchase price. This was repayable over 180 months at £166.67 per month.

- In January 2022, through PR, Mrs E complained to the Lender, seeking to find it responsible for the Supplier having mis-sold the timeshare and associated loan. The individual mis-selling concerns raised by PR can be found in the table below, but broadly-speaking they included misrepresentations for which Mrs E sought to hold the Lender liable under Section 75 of the CCA, and matters which were alleged to have rendered the credit relationship between her and the Lender unfair under Section 140A of the CCA.

The Lender rejected the complaint, which 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.

Mrs E disagreed with the Investigator's assessment and asked for an Ombudsman's decision – which is why it was passed to my colleague who previously issued a provisional decision, and then to me.

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. But 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 3.7.3R
- CONC 4.5.3R
- CONC 4.5.2G

<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

What I've provisionally decided – and why

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

I think it's also important at this stage to outline very briefly the general grounds on which Mrs E seeks redress from the Lender in relation to what are, at least in part, the *Supplier's* alleged wrongdoings as opposed to the Lender's. The grounds are that Mrs E has a claim under Section 75 of the CCA, and Section 140A of the CCA.

Section 75 of the CCA gives a person who has purchased goods or services with certain kinds of credit, a right to claim against their lender in respect of any breach of contract or misrepresentation on the part of the supplier of those goods or services. This is subject to certain technical conditions being met, which I am satisfied have been met in this case.

Section 140A of the CCA operates in a more complex manner. Insofar as is relevant to Mrs E's case, it means that the credit relationship between her and the Lender can be found unfair because of anything done (or not done) by, or on behalf of, the Lender.

An unfair credit relationship can also be based on the terms of a related agreement (such as the agreement to buy the timeshare) and, when combined with Section 56 of the CCA, on anything done or not done by the Supplier on the Lender's behalf before the making of the timeshare or loan agreements. The Supplier's acts or omissions during the process of negotiations leading up to the purchase are deemed to be the Lender's responsibility.

As part of my consideration of the matter of Mrs E's claim that there has been an unfair credit relationship, I've thought about, amongst other things, the commission arrangements between the Lender and the Supplier, and the disclosure of those arrangements to Mrs E. I've also thought about any existing unfairness from a related credit agreement, where one exists or existed.

In the interests of efficiency and ease of reading, I have set out my findings in a table format. Where a particular finding requires further explanation or analysis, I have indicated this and provided the further explanation below the table. In this case we have received submissions from Mrs E directly, as well as from PR. I have considered concerns raised by both in my findings.

Table of Summarised Findings

Section 75 - Misrepresentations	Reason why this complaint doesn't succeed
It was falsely represented that the product was an investment that would "considerably appreciate in value".	There's insufficient persuasive evidence this was said. If it was said, it would not be untrue to describe the product as an investment as it contained investment features. Any statements regarding future value are likely to have been statements of honest opinion in the absence of evidence to show otherwise.
It was falsely represented that the membership involved owning a share in property, but Mrs E doesn't own anything and the product doesn't exist.	Telling prospective members that they were buying a fraction or share of one of the Supplier's properties was not untrue. Mrs E's share in the Allocated Property was clearly the purchase of a share of the net sale proceeds of a specific property in a specific resort.
It was falsely represented that the Fractional Club membership could be sold back to the Supplier or easily to third parties at a profit.	There's very little colour or context to this allegation, meaning it's difficult to conclude the Supplier represented this to be the case. Mrs E also signed to say she understood the Supplier would not buy back the membership.
It was falsely represented that Mrs E would have access to "the holiday apartment" at any time all year round.	This is a vague allegation which also lacks sufficient detail, context or colour to demonstrate the Supplier made such statements. Mrs E has provided more detail to these allegations, but it appears all bookings were subject to availability. **See further details below.**

<table>
<tr><td>The Supplier told Mrs E she was not taking out a loan, and was simply paying monthly for her membership.</td><td>Mrs E signed the Credit Agreement, which made it clear that the arrangement she was agreeing to was a loan, and what the conditions of that loan were, such as the interest rate, term, and total amount payable. So even if the Supplier had earlier given the impression Mrs E was paying for her membership in some other way, I think that was corrected by the paperwork she signed.</td></tr>
<tr><th>Matters allegedly rendering the credit relationship unfair</th><th>Reason why this complaint doesn't succeed</th></tr>
<tr><td>Mrs E was pressured into making the purchase.</td><td>There is little evidence of what specifically the Supplier said or did which meant Mrs E felt she had no choice but to purchase. Mrs E also did not use the cooling-off period to cancel the purchase, which I would have expected had she only purchased because she was pressured into doing so. While Mrs E says the cooling off period was not long enough, the period given by the Supplier was the period required by law.</td></tr>
<tr><td>The Lender failed to carry out the creditworthiness/affordability checks required by industry guidance or regulations.</td><td>Mrs E has not provided evidence that the loan was actually unaffordable, which would need to be shown if the complaint were to succeed on this point.</td></tr>
<tr><td>The Credit Agreement was arranged by an unauthorised credit broker, meaning it was unenforceable.</td><td>The entity which arranged the Credit Agreement held the correct permissions from the Financial Conduct Authority at the relevant time, so the agreement was not arranged by an unauthorised credit broker.</td></tr>
<tr><td>The Purchase Agreement contained terms which were unfair to Mrs E, including terms allowing the Supplier to repossess the timeshare for minor breaches.</td><td>While there are terms within the Purchase Agreement which could be operated in an unfair way, no evidence has been provided that the terms have been operated in this way in practice, or likely will be in future, in Mrs E’s case.</td></tr>
<tr><td>The Supplier marketed and sold the membership as an investment in breach of Regulation 14(3) of the Timeshare Regulations.</td><td>While it's possible the Supplier marketed the product in this way, it would need to have played a material part in Mrs E's decision to buy the Fractional Club membership, to render the credit relationship between her and the Lender unfair. See further details below.</td></tr>
<tr><td>The Lender paid a commission to the Supplier which was not properly disclosed to Mrs E.</td><td>A flat rate commission of £577.20 was paid by the Lender to the Supplier in this case. This was 4% of the amount of credit and not sufficient to render the credit relationship unfair in my opinion. See further details below.</td></tr>
</table>

Mrs E’s concerns about the availability of holidays using the product

In a witness statement which I’m told dated to either April 2021 or April 2022, Mrs E set out her dissatisfaction with the holiday features of the Fractional Club product. She said:

"The representatives assured us that we would always be able to take any weeks we requested, including school holidays and could easily secure a 2 bedroom apartment which could accommodate our family of 4."

And:

"We never had chances to spend a single [one] of our points we accumulated across the last two years (only promotional weeks), because of their availability during school terms was limited and subject to extra costs. So far, our…membership has never been used. We have been paying since July 2019 for a service and a product we could not use."

And:

"…[It was] a membership for holidays that have never been used because those accommodations were always unavailable when we needed them. A membership for paying extra costs if we wanted to book a holiday during school holidays. Accommodations that were meant to have all the luxe and benefits that were inaccessible for some reason. Holiday exchanges with [Exchange Company] that again you had to pay for like for a normal holiday. Some of [Supplier] resorts did not even have accommodation for more than 4 people (we were promised we could have taken family members with us as they could accommodate up to 6 people)."

In a later email, Mrs E added:

"The luxury apartments we were invited to stay to convince us that we were subscribing for a high level product/category were only used for promotional purposes to scam people. They were like "showrooms" with the jacuzzi, the garden, large rooms, 2 bathrooms with all facilities. In reality, regardless of how long in advance we were making the reservation (we tried to book one year and a half in advance) they were always shown as unavailable and wanted more money to book even in a very average, basic 1 bed apartment."

It's difficult to conclude the Supplier misrepresented the availability of holidays which could be taken under the membership, or that the Supplier was in breach of contract in relation to Mrs E's exercise of her holiday rights. While I've no doubt the Supplier would have been keen to highlight the benefits of its product, I'm not convinced it would have claimed that Mrs E would be guaranteed to obtain whatever accommodation she wanted, when she wanted. Additionally, I note the documents Mrs E signed stated that holidays would be subject to availability, that bookings were on a "first-come, first-served" basis, and that accommodation during school holidays in particular would need to be booked as far in advance as possible.

Overall I've been unable to identify a specific false statement of fact by the Supplier in relation to the availability of holidays. And while Mrs E has referred to difficulties making the booking she wanted, there is a lack of specific detail which means it's not possible to identify any specific potential breaches of contract.

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

Given what is known about the way in which the Supplier sold Fractional Club memberships, I think it's *possible* the sales representatives could have said or suggested to Mrs E that Fractional Club membership was an investment which could lead to a financial gain or profit, and therefore have acted in contravention of the relevant prohibition in the Timeshare Regulations.

However, it's necessary to show that any such breach by the Supplier had a material impact on Mrs E's decision to go ahead with her purchase, to be able to arrive at a conclusion that

the credit relationship between Mrs E and the Lender was rendered unfair to her as a result. In this case, the evidence is not persuasive, for reasons I'll explain.

I referred earlier to a witness statement from Mrs E, and which was sent to the Financial Ombudsman Service by PR. The statement is relatively long, at six pages long, and narrates Mrs E's experiences with the Supplier. Like my former colleague who previously issued a provisional decision on this complaint, I observe that the vast majority of Mrs E's statement is focused on concerns over the Supplier's sales techniques, having been misled over the financing arrangements, and disappointed expectations regarding the holiday aspects of the product.

At the end of Mrs E's statement, she does make a reference to the Fractional Club product being an investment. In the statement originally sent to the Financial Ombudsman Service in August 2022, Mrs E says:

"During the three presentations we were never told a 100% loan would be taken out for us to make the payment towards the membership. We were on the impression that it would be a direct debit from our account for the duration of the membership, after which we had the option to trade the amount paid as an investment in a property."

Considering the context in which this paragraph appeared, at the end of a long statement which dealt at length with various other concerns, it does not appear to me that Mrs E was motivated to purchase the product because she thought it was or might be a profitable investment. Even in the paragraph in which the word "investment" appears, the focus is on having been misled about the financing arrangements.

It's also important to discuss at this point, the fact that the Financial Ombudsman Service received a second version of this witness statement in August 2023. In this version, the paragraph I quoted above had changed to (changes in bold):

"During the three presentations we were never told a 100% loan would be taken out for us to make the payment towards the membership. We were ***told the Fractional ownerships were an investment in the property and that after a certain period the property would be sold and we would receive a profit on our investment.****"*

The changes have a number of effects on this part of the statement. Firstly, rather than being something Mrs E had got an impression of, the fact of the product being an investment was now something the Supplier had directly told her. Secondly, the amended statement introduces the idea that a profit would be made when the Allocated Property was sold.

As I've said above, the second statement was received in August 2023. This was a few months 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.

The judgment in *Shawbrook & BPF v FOS* emphasised that the marketing or sale of a fractional timeshare as an investment was something which might render the credit relationship between a borrower and a lender unfair within the meaning of Section 140A of the CCA. The fact that a changed version of Mrs E's statement emerged after this judgment, and that these changes ostensibly reflected the implications of *Shawbrook & BPF v FOS*, is something that appeared to me to be unusual. I asked PR to explain what had happened.

PR said that another company, which appears to have been a lead generator or middleman of some kind, had originally taken Mrs E's statement. It said it had asked this company to

comment and it had responded:

"Our records show that a telephone call took place between [Company] and the client in April 2022. During this conversation, and in line with standard procedure, the client was asked to provide any further details about how their [Supplier] Fractional ownership had been described and what had influenced their decision to purchase.

During that call, the client confirmed that they were told the Fractional ownership was an investment in the property, which is reflected in their original statement. They went on to elaborate that they had been led to believe the property would later be sold and that they would receive a financial return—information they subsequently discovered was false.

This additional detail was recorded and, with the client's agreement, incorporated into an updated version of their witness statement to strengthen their claim. Both the original and updated statements were saved in the client's [Company] file. When a request for a witness statement was made in 2023, the updated version was supplied."

PR added that it thought the third party had probably meant to write "April 2021" instead of "April 2022", because it had received information previously that the witness statement had been written in April 2021.

The lead generator's comment does not, in my view, provide a credible explanation for the changes in Mrs E's statement between August 2022 (when the original statement was sent to us) and August 2023. The comment appears to avoid directly answering when it was that the statement was changed. It refers to a call taking place in April 2022, during which Mrs E had provided the information which was included in the changed statement. When we were sent Mrs E's statement in August 2022, it was in its original form. If Mrs E had provided additional information in April 2022 about how the Supplier had marketed the Fractional Club product to her, I find it difficult to understand why this information did not appear in the statement we received in August 2022 and only appeared after the judgment in *Shawbrook & BPF v FOS.*

I think there is too much doubt over the provenance of Mrs E's second witness statement, and I am unable to attach any weight to it as a result. Her first witness statement does not, in my view, suggest in any way that she was motivated to buy the Fractional Club membership because she thought it was an investment. It follows that I'm unable to conclude the credit relationship in question was unfair to her for reasons relating to any potential breach by the Supplier of the relevant prohibition.

The Payment of a Commission by the Lender to the Supplier

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 E 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 E, 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 E 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 E.

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 Mrs E entered into wasn't high. At £577.20, it was only 4% of the amount borrowed and even less than that as a proportion of the charge for credit. So, had she 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 currently 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 E wanted Fractional Club membership and had no obvious means of her own to pay for it. And at such a low level, the impact of commission on the cost of the credit she needed doesn't strike me as disproportionate. So, I think she would still have taken out the loan to fund her 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. And as it wasn't acting as an agent of Mrs E 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.

Overall, therefore, 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 E.

I informed PR that I was minded to make findings about commission along the lines of what I've said above, and it responded with the following points:

- It wasn't just the amount of commission which rendered the credit relationship unfair, but the overall arrangements between the Lender and Supplier and a lack of transparency which had misled Mrs E. The overall arrangements hadn't been considered.

- There had been various different types of wrongdoing by the Supplier and/or the Lender which, even if they did not render the credit relationship unfair by themselves, had that effect in combination with each other.

I've thought about PR's points, but they don't change my conclusions regarding commission. I think PR's concerns are answered above, but to repeat or clarify some key points:

- The commission paid in Mrs E's case was a flat rate commission and it was not possible for the Supplier to, for example, obtain a higher commission by arranging a credit agreement with a higher interest rate.

- In this case, there were no other ties between the Lender and Supplier which were not properly disclosed. For example, there were no commercial arrangements whereby the Supplier had to offer Mrs E's business to the Lender first, rather than to other available lenders.

- While I'm aware that PR is of the view that the Supplier and/or Lender are responsible for a variety of wrongful acts or omissions, I have dealt with those allegations elsewhere in this decision.

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 E 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.

Commission: The Alternative Grounds of Complaint

While I've found that Mrs E's credit relationship with the Lender wasn't unfair to her for reasons relating to the commission arrangements between it and the Supplier, two of the grounds on which I came to that conclusion also constitute separate and freestanding complaints to Mrs E's complaint about an unfair credit relationship. So, for completeness, I've considered those grounds on that basis here.

The first ground relates to whether the Lender is liable for the dishonest assistance of a breach of fiduciary duty by the Supplier because it took a payment of commission from the Lender without telling Mrs E (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'm not persuaded that the Supplier – when acting as credit broker – owed Mrs E a fiduciary duty. So, the remedies that might be available at law in relation to the payment of secret commission aren't, in my view, available to her. And while it's possible that the Lender failed to follow the regulatory guidance in place at the Time of Sale insofar as it was relevant to disclosing the commission arrangements between it and the Supplier, I don't think any such failure on the Lender's part is itself a reason to uphold this complaint because, for the reasons I also set out above, I think Mrs E would still have taken out the loan to fund her purchase at the Time of Sale had there been more adequate disclosure of the commission arrangements that applied at that time.

Conclusion

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

My provisional decision

For the reasons explained above, I'm not minded to uphold this complaint.

Will Culley
Ombudsman