

The complaint

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

What happened

Mr and Mrs G purchased a membership of a timeshare (the 'Fractional Club') from a timeshare provider (the 'Supplier') on 06 June 2019 (the 'Time of Sale'). They entered into an agreement with the Supplier to buy 690 fractional points, trading in an existing trial membership, and paying an additional cost of £10,912 (the 'Purchase Agreement').

Fractional Club membership was asset backed – which meant it gave Mr and Mrs G more than just holiday rights. It also included a share in the net sale proceeds of a property named on their Purchase Agreement (the 'Allocated Property') after their membership term ends. Mr and Mrs G paid for their Fractional Club membership by taking finance of £10,912 from the Lender in their joint names. (the 'Credit Agreement'). This was repaid in full in April 2020.

Mr G and Mrs G – using a professional representative (the 'PR') – wrote to the Lender on 08 March 2021 (the 'Letter of Complaint') to raise a number of different concerns. Since then the PR has raised some further matters it says are relevant to this outcome of the complaint. As both sides are familiar with the concerns raised, it isn't necessary to repeat them in detail here beyond the summary above.

The Lender dealt with Mr and Mrs G's concerns as a complaint and issued its final response letter on 14 May 2021, rejecting it on every ground.

The complaint was then referred to the Financial Ombudsman Service. It was assessed by an Investigator who, having considered the information on file, upheld the complaint on its merits. The Investigator thought, largely based on what Mr G and Mrs G said happened at the time of sale, that the Supplier had marketed and sold Fractional Club membership as an investment to Mr and Mrs G at the Time of Sale in breach of Regulation 14(3) of the Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010 (the 'Timeshare Regulations'). And given the impact of that breach on their purchasing decision, the Investigator concluded that the credit relationship between the Lender and Mr and Mrs G was rendered unfair to them for the purposes of section 140A of the CCA.

The lender 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 dated 9 May 2025 upholding Mr and Mrs G's complaint for similar and broader reasons than those of the Investigator. The Lender disagreed with my findings and provided reasons for their disagreement which largely focussed on the reliability of the statement by Mr G and Mrs G. The PR on behalf of Mr and Mrs G accepted my provisional decision.

Earlier this year I issued an addendum to my provisional decision which didn't uphold Mr G and Mrs G's complaint. This addendum focussed on the issues of commission and what Mr G and Mrs G have said happened during the sale and which I said I didn't think I could rely upon any more following the Lender's submissions and thus could no longer uphold the complaint.

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/guidance¹ are also relevant:

- The Consumer Credit Sourcebook ("CONC")² content at the material time, notably CONC 3.7.3R, CONC 4.5.3R, and CONC 4.5.2G.
 - Principles 6,7, and 8 of the FCA's Principles for Businesses ("PRIN")³.
- CONC provisions sit alongside firms' wider obligations such as those in PRIN.

What I've decided – and why

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

And having done 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.

¹ "R" denotes a rule; "G" denotes guidance

² The relevant rules, guidance and principles can be found in the Financial Conduct Authority ("FCA") Handbook, available on its website.

³ Ibid.

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 G and Mrs G were told by the Supplier that Fractional Club membership was an “investment” when that was not true. However this does not strike me as a misrepresentation even if such a representation 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 – nor was it untrue to tell prospective members that they would receive some money when the allocated property is sold. After all, a share in an allocated property was clearly the purchase of a share of the net sale proceeds of a specific property in a specific resort. And while the PR might question the exact legal mechanism used to give prospective members that interest, it did not change the fact that they acquired such an interest.

So, while I recognise that Mr G and Mrs G - 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.

Mr G and Mrs G say that they could not holiday where and when they wanted to. That was framed, in the Letter of Complaint, as an alleged misrepresentation. However, on my reading of the complaint, this suggests that the Supplier was not living up to its end of the bargain, potentially breaching the Purchase Agreement.

Yet, like any holiday accommodation, availability was not unlimited – given the higher demand at peak times, like school holidays, for instance. Some of the sales paperwork likely to have been signed by Mr G and Mrs G states that the availability of holidays was/is subject to demand. I accept that they may not have been able to take certain holidays. But I have not seen enough to persuade me that the Supplier had breached the terms of the Purchase Agreement.

So, from the evidence I have seen, I do not think the Lender is liable to pay Mr G and Mrs G 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 in relation to this aspect of the complaint either.

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 G and Mrs G 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, including the contractual documentation and disclaimers made by the Supplier;
3. The commission arrangements between the Lender and the Supplier at the Time of Sale and the disclosure of those arrangements;
4. Evidence provided by both parties on what was likely to have been said and/or done at the Time of Sale;
5. The inherent probabilities of the sale given its circumstances; and
6. 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 G and Mrs G and the Lender.

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

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

They include allegations that:

1. Mr G and Mrs G were pressured by the Supplier into purchasing Fractional Club membership at the Time of Sale.
2. the right checks weren't carried out before the Lender lent to Mr G and Mrs G.
3. the loan interest was excessive.
4. The Credit Agreement was arranged by a broker acting outside of its authorisation.
5. Mr G and Mrs G were not given a choice of lender by the Supplier.

However, as things currently stand, none of these strike me as reasons why this complaint should succeed.

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

I haven't seen anything to persuade me that the right checks weren't carried out by the Lender given this complaint's 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 G and Mrs G was actually unaffordable before also concluding that they lost out as a result and then consider whether the credit relationship with the Lender was unfair to them for this reason. But from the information provided, I am not satisfied that the lending was unaffordable for Mr G and Mrs G.

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

Similarly, the PR has not explained how, if it were true, Mr G and Mrs G not being offered a different lender to pay for Fractional Club membership caused them any unfairness or financial loss. Mr G and Mrs G was aware of the interest rate set out on the face of the Credit Agreement, as well as the term of the loan and the monthly repayments, so they understood what it was they were taking out. Further, I don't think the rate of interest was excessive, compared either to other rates available from other point-of-sale lenders or on the open market, so I can't say it would be fair or reasonable to tell the Lender to do anything because of this.

Overall, therefore, I don't think that Mr G and Mrs G's credit relationship with the Lender was rendered unfair to them under Section 140A for any of the reasons above. But there is another reason, perhaps the main reason, why the PR now 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 them as an investment in breach of prohibition against selling timeshares in that way.

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

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

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

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

But the PR and Mr G and Mrs G say that the Supplier did exactly that at the Time of Sale – saying, in summary, that they 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 G and Mrs G 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*.⁴

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

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

On the one hand, it is clear that the Supplier made efforts to avoid specifically describing membership of the Fractional Club as an 'investment' or quantifying to prospective purchasers, such as Mr G and Mrs G, 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 G and Mrs G 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.

Was the credit relationship between the Lender and Mr G and Mrs G rendered unfair?

Having found that it was possible that the Supplier breached Regulation 14(3) of the Timeshare Regulations at the Time of Sale, I now need to consider what impact that breach had on the fairness of the credit relationship between Mr G and Mrs G 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 G and Mrs G and the Lender that was unfair to them and warranted relief as a result, whether the Supplier's breach of Regulation 14(3) led them to enter into the Purchase Agreement and the Credit Agreement is an important consideration.

⁴ The PR has argued that Fractional Club membership amounted to an Unregulated Collective Investment Scheme, however this was considered and rejected in 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).

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 Mr G and Mrs G decided to go ahead with their purchase.

I said in my addendum the following:

"The Lender explains it has significant doubts about the reliability of the statement provided by Mr G and Mrs G and notes its contents and its unsigned undated nature. I think there are a number of issues to consider here. The PR has provided electronic evidence of when it received Mr G and Mrs G's statement which shows it was received on 21 December 2020. However the 'client call note' which the statement is apparently based upon is dated 5 January 2021. It's unclear how the statement was created prior to the call, if that is what the PR's position is. And if the call was after the statement was received it is unclear what the point of the call was.

I've also compared the statement to the content of the call note. In the call note the description of the sale in June 2019 is relatively brief and factual as to the characteristics of the membership purchased. It contains no persuasive explanation of how the sale breached regulation 14.3 nor what facets of such failings motivated them into purchasing the membership. Rather it just makes that allegation that it was sold as an investment without any explanation as to how.

I've also compared the call notes to the written statement and note it appears that there is a lot more information in the written statement than is mentioned in the call note. Setting aside the issue of the dates of these bits of evidence for a moment, had the telephone call conversation contained the level of detail that the statement contains, then I'd have expected the call note to be substantially more detailed and lengthy than it is.

Lastly, I note the Lender has quoted a number of different complainants' statements that it has received regarding timeshare sales which it says have significant passages of either identical wording or near identical wording. The Lender has gone on to say:

"It is apparent from the above that the witness testimony isn't reliable, it hasn't been prepared by Mr and Mrs G and whilst they might have agreed to the testimony, this is inherently different to confirming this was their exact recollection with no additions. It also demonstrates and emphasizes that the allegations have been made on a generic basis and hold no merit."

Having considered the matter again I currently think I cannot place significant weight on the written statement. And I don't think the call note is persuasive that the membership was actually sold /marketed as an investment or that this motivated Mr G and Mrs G in purchasing this membership. So I now think this complaint should not be successful."

The PR has responded by saying it doesn't agree with the Lender's position but doesn't (to my mind) directly address the significant issues of how Mr G and Mrs G's statement appears to have been drafted prior to the PR discussing the matter on a call with them. It also doesn't address the important issue of their statement containing tracts of wording identical and near identical to those used in other consumer submissions and statements. The PR refers to my previously observing about the statement that; *"I note that that on reviewing the copy of the statement that succeeding pages of the letter are discernible on preceding pages, apparently to my mind due to how the origin document had been scanned and or copied."* But the fact that the document doesn't appear to me to have been 'doctored' after its drafting doesn't mean that the drafting of that statement originally hadn't been uninfluenced prior to its drafting (as the Lender is suggesting).

In short, I don't think I can place significant weight in my decision making on the statement or call note from Mr G and Mrs G. It must be remembered a complaint about a S140A claim is in many ways akin to deciding what a court would consider in the mirror claim against the supplier. And I don't think it's unfair of the Lender to consider that this evidence shouldn't be persuasive considering the identified issues with its reliability. And thus I'm not persuaded that the prospect of a financial gain from Fractional Club membership was an important and motivating factor when Mr G and Mrs G decided to go ahead with their purchase.

That doesn't mean Mr G and Mrs G 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 G and Mrs G themselves don't persuade me that their purchase was motivated by their 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 they 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 G and Mrs G'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 G and Mrs G and the Lender was unfair to them even if the Supplier had breached Regulation 14(3).

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

The PR says that Mr G and Mrs G were not given sufficient information at the Time of Sale by the Supplier about membership, including about the ongoing costs of Fractional Club membership and the fact that Mr G and Mrs G's heirs could inherit these costs.

As I've already indicated, the case law on Section 140A makes it clear that it does not automatically follow that regulatory breaches create unfairness for the purposes of the unfair relationship provisions. The extent to which such mistakes render a credit relationship unfair must also be determined according to their impact on the complainant.

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

As for the PR's argument that Mr G and Mrs G's heirs would inherit the on-going management charges, I fail to see how that could be the case or that it could have led to an unfairness that warrants a remedy.

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”⁵;
- 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 G and Mrs G 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 G and Mrs G. 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 G and Mrs G 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

⁵ *Hopcraft, Johnson and Wrench* (para 327).

reason to find the credit relationship in question unfair to Mr G and Mrs G. 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 G and Mrs G's Credit Agreement wasn't high. The commission paid was £545.60 which was only 5% of the amount borrowed and only 5.48% as a proportion of the charge for credit, which is the calculation the Supreme Court used.

Had Mr G and Mrs G known at the Time of Sale that the Supplier was going to be paid a flat rate of commission at these levels, 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 G and Mrs G 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 loans to fund their purchases at the Times 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 G and Mrs G but as the supplier of contractual rights they 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 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 G and Mrs G's decision to enter into the Credit Agreement.

Overall, I'm don't intend to conclude that the commission arrangement between the Supplier and the Lender were likely to have led to a sufficiently extreme inequality of knowledge that rendered the credit relationship unfair to Mr G and Mrs G. And I'm glad to observe that the PR has latterly stated it has nothing further to add on this topic.

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 G and Mrs G'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 G and Mrs G (that is, secretly). But given I'm not persuaded the Supplier – when acting as credit broker – owed Mr G and Mrs G 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 G and Mrs G because, for the reasons I also set out above, I think Mr G and Mrs G 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.

Conclusion

In conclusion I've decided that the Lender did not act unfairly or unreasonably when it dealt with the relevant Section 75 claim, and I am not persuaded that the Lender was party to a credit relationship with Mr G and Mrs G 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

I do not uphold this complaint. The Lender has nothing further to do with this matter.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G and Mrs G to accept or reject my decision before 27 February 2026.

Rod Glyn-Thomas
Ombudsman