

The complaint

Mr M's complaint is, in essence, that Tandem 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 claims under Section 75 of the CCA.

What happened

Mr and Mrs M were members of a timeshare provider (the 'Supplier') – having purchased nine products from it between 2011 and mid-2018. But the product at the centre of this complaint is their membership of a timeshare that I'll call the 'Signature Collection' – which they bought on 19 July 2018 (the 'Time of Sale'). Mr and Mrs M entered into an agreement with the Supplier to buy Signature Collection membership including fractional rights (equivalent to 1,220 fractional points) at a cost of £17,709 (the 'Purchase Agreement').

Signature Collection membership was asset backed – which meant it gave Mr and Mrs M more than just holiday rights. It also included a share in the net sale proceeds of a property named on the Purchase Agreement (the 'Suite') after their membership term ends. Their fractional rights allowed Mr and Mrs M to use the Suite on a specified week each year or to exchange that week for 1,220 fractional points that could be used to holiday at resorts in the Supplier's portfolio (or additional resorts through its affiliates).

Mr and Mrs M paid for their Signature Collection membership by taking finance of £17,799 from the Lender (the 'Credit Agreement') in Mr M's sole name. As such, only Mr M can complain about his relationship with the Lender, and I will refer only to Mr M for the remainder of this decision, although this can be taken to mean Mr and Mrs M where I am referring to their timeshare membership.

Mr M – using a professional representative (the 'PR') – wrote to the Lender on 23 March 2022 (the 'Letter of Complaint') to raise several 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 treated Mr M's concerns as a complaint and provided its final response on 21 July 2022. The PR then referred the complaint to the Financial Ombudsman Service. It was assessed by an Investigator who, having considered the information on file, upheld the complaint on its merits. They said the Supplier had breached Regulation 14(3) of the Timeshare Regulations¹ and because this was material to Mr M's decision to purchase, this caused his relationship with the Lender to be unfair to him.

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 explaining that I was not planning to uphold the complaint.

¹ The Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010

The Lender accepted to my provisional decision.

The PR disagreed with my provisional decision and provided some comments and documents it wanted me to consider when making my final decision.

The legal and regulatory context

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

The legal and regulatory context that I think is relevant to this complaint is no different to that shared in several hundred ombudsman decisions on very similar complaints. And with that being the case, it is not necessary to set it out here. However, I think the following are also relevant:

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

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

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

The FCA's Principles

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

Principle 6
Principle 7
Principle 8

What I've decided – and why

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

Following the responses from both parties, I've considered the case afresh. Having done so, I've reached the same decision as that which I outlined in my provisional decision – and for broadly the same reasons. A copy of my provisional findings is below. As such, I do not uphold this complaint.

START OF COPY OF PROVISIONAL FINDINGS

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") if there is an actionable misrepresentation and/or breach of contract by the supplier.

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

It was said in the Letter of Complaint that Signature Collection membership had been misrepresented by the Supplier at the Time of Sale because Mr M was:

- (1) Told by the Supplier that Signature Collection membership had a guaranteed end date when that was not true.
- (2) Told by the Supplier that they owned a 'fraction' of the Suite when that was not true as it was owned by a trustee.
- (3) Told by the Supplier that Signature Collection membership was an "investment" when that was not true.

Neither the PR nor Mr M have set out in any detail what words and/or phrases were allegedly used by the Supplier to misrepresent Signature Collection for the reasons given in points 1 or 2. However, the PR says that such representations were untrue because the Suite was legally owned by a trustee and there was no indication of what duty of care it had to actively market and sell the property. Further, there is no guarantee that any sale will result at all, leaving prospective members to pay their annual management charge for an indefinite and unspecified period.

However, I cannot see why the phrases in points 1 or 2 above would have been untrue at the Time of Sale even if they were said. It seems to me to reflect the main thrust of the contract Mr M entered. And while, under the relevant Rules, the sale of the Suite could be postponed for up to two years by the 'Vendor'², longer than that if there were problems selling and the 'Owners'³ agreed, or for an otherwise specified period provided there was unanimous agreement in writing from the Owners, that does not render the representation above untrue. So, I am not persuaded that the representation above constituted a false statement of fact even if it was made.

As for point 3, it 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 Suite is sold. After all, a share in a Suite 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.

² Defined in the relevant Rules as "CLC Resort Developments Limited".

³ Defined in the relevant Rules as "a purchaser who has entered into a Purchase Agreement and has been issued with a Fractional Rights Certificate (which shall include the Vendor for such period of time until the maximum number of Fractional Rights have been acquired)."

The PR has raised other matters as potential misrepresentations, but it seems to me that they are not allegations of the Supplier saying something that was untrue. Rather, it is that Mr M wasn't told things about the way the membership worked, for example, that the obligation to pay management fees could be passed on to his children. It seems to me that these are allegations that Mr M wasn't given all the information he needed at the Time of Sale, and I will deal with this further below.

So, while I recognise that Mr M – and the PR – have concerns about the way in which Signature Collection membership was sold by the Supplier, when looking at the claim under Section 75 of the CCA, I can only consider whether there was a factual and material misrepresentation by the Supplier. For the reasons I've set out above, I'm not persuaded that there was. And that means that I don't think that the Lender acted unreasonably or unfairly when it dealt with this 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 M says that he could not holiday where and when he 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 M states that the availability of holidays was subject to demand. It also looks like Mr M made use of his membership to holiday. I accept that he may not have been able to take certain holidays. But I have not seen enough to persuade me that the Supplier 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 M 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 Signature Collection membership was actionably misrepresented by the Supplier at the Time of Sale. But there are other aspects of the sales process that, being the subject of dissatisfaction, I must explore with Section 140A in mind if I'm to consider this complaint in full – which is what I've done next.

Having considered the entirety of the credit relationship between Mr M and the Lender along with all 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. Evidence provided by both parties on what was likely to have been said and/or done at the Time of Sale.
4. The commission arrangements between the Lender and the Supplier at the Time of Sale and the disclosure of those arrangements.
5. The inherent probabilities of the sale given its circumstances.
6. Any existing unfairness from a related credit agreement⁴.

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

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

Mr M'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 M were pressured by the Supplier into purchasing Signature Collection membership at the Time of Sale.
2. The right checks weren't carried out before the Lender lent to Mr M.
3. Mr M was not given a choice of lender by the Supplier.
4. The loan interest was excessive.

However, as things currently stand, none of this strikes me as a reason why this complaint should succeed.

I acknowledge that Mr M may have felt weary after a sales process that went on for a long time. But he says little about what was said and/or done by the Supplier during the sales presentation that made him feel as if he had no choice but to purchase Signature Collection membership when he simply did not want to. Mr M was also given a 14-day cooling off period and he has not provided a credible explanation for why he did not cancel his membership during that time. And with all of that being the case, there is insufficient evidence to demonstrate that Mr M made the decision to purchase Signature Collection membership because his 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 M was actually unaffordable before also concluding that he lost out as a result and then consider whether the credit relationship with the Lender was unfair to Mr M for this reason. But from the information provided, I am not satisfied that the lending was unaffordable for Mr M.

⁴ There is no related credit agreement in this instance – being one that was between Mr M and the Lender which was consolidated into the Credit Agreement.

The PR has not explained how, if it were true, Mr M not being offered a different lender to pay for Signature Collection membership caused him any unfairness or financial loss. Mr M 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 he understood what it was he was taking out.

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 M's credit relationship with the Lender was rendered unfair to him under Section 140A for any of the reasons above. But there are other reasons why the PR now says the credit relationship with the Lender was unfair to Mr M, which I deal with below.

The Supplier's alleged breach of Regulation 14(3) of the Timeshare Regulations⁵

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

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

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

But the PR and Mr M say that the Supplier did exactly that at the Time of Sale. 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 Suite could constitute an investment as it offered Mr M the prospect of a financial return – whether or not, like all investments, that was more than what he first put into it. But it is important to note at this stage that the fact that Signature Collection membership included an investment element did not, itself, transgress the prohibition in Regulation 14(3). That provision prohibits the *marketing and selling* of a timeshare contract as an investment. It doesn't prohibit the mere existence of an investment element in a timeshare contract or prohibit the marketing and selling of such a timeshare contract *per se*.

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

To conclude, therefore, that Signature Collection membership was marketed or sold to Mr M 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 him as an investment at the Time of Sale, i.e. told Mr M or led him to believe that Signature Collection membership offered him the prospect of a financial gain (i.e., a profit) given the facts and circumstances of *this* complaint.

⁵ The Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010

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

On the one hand, the Supplier made efforts to avoid specifically describing membership of the Signature Collection as an 'investment' or quantifying to prospective purchasers, such as Mr M, the financial value of their share in the net sales proceeds of the Suite along with the investment considerations, risks and rewards attached to them.

On the other hand, I think the Supplier's sales process left open the possibility that the sales representative may have positioned Signature Collection membership as an investment. So, I accept that it's equally possible that Signature Collection membership was marketed and sold to Mr M 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 issue for the purposes of this decision.

Was the credit relationship between the Lender and Mr M 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 M 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 M and the Lender that was unfair to them and warranted relief as a result, whether the Supplier's breach of Regulation 14(3) led Mr M 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 Signature Collection membership was not an important and motivating factor when Mr M decided to go ahead with their purchase. I say this because:

- Mr M was a timeshare member with the Supplier since 2012 – making further purchases in 2013, 2014, 2015, 2017, two purchases in 2018, and in 2020.
- Mr M's unsigned and undated statement provided to us on 29 November 2023 ('Mr M's Statement') says that Fractional Property Owner's Club ('FPOC') membership⁶ was sold as an investment to him in 2015, saying "*we would get our money back plus any profit where the property prices had gone up.*" But there is no similar allegation about the Time of Sale.

⁶ FPOC membership was linked to an allocated property in a similar way to Signature Collection membership, but did not give any right to stay in that property, only fractional points to spend on holidays.

- At the Time of Sale, Mr M was already a Signature Collection member, having previously made a purchase on 13 February 2018. About that purchase and the Time of Sale Mr M's Statement says, "*we bought another fractional... [the Supplier] arranged the loan for us which was over 2 years on 0% interest, so we paid that one off quite quickly. We weren't so keen on that one and so later that year⁷ we upgraded to [resort name where the Suite is located] and [the Supplier] arranged a consolidated loan with [the Lender]*"⁸
- So, Mr M's Statement does not provide any information about what he was told at the Time of Sale or why he made the purchase other than that he didn't like the resort or allocated property associated with his existing Signature Collection membership – nor does he provide such information for his purchase of Signature Collection membership earlier that year.
- The Letter of Complaint does explicitly state, twice, Mr M's reasons for making the purchase at the Time of Sale, saying:
 - "*On 19/07/2018 our Clients were coerced to upgrade their membership as they were not happy with quality of accommodation and the availability. They purchased the Fractional product as advised by [the Supplier] so that they could get a better quality of holiday and availability would be better.*"
Pages 1 & 2 of the Letter of Complaint
 - "*Our Clients stated that they was [sic] pressurised to purchase the product in order to improve their holiday options and accommodation.*"
Page 3 of the Letter of Complaint
- The Letter of Complaint also said Mr M's expectation was only that he would "*recoup some of their total investment*" upon the sale of the Suite. That does not suggest he had any hope or expectation of making a profit, only of getting back some of what he had spent. And that does not describe an investment as defined above.
- Even if Mr M had said that Signature Collection membership was sold to him as an investment at the Time of Sale, the Letter of Complaint says they purchased it for improved holiday options, quality of accommodation and availability. Mr M's Statement suggests he purchased it because he preferred the Suite to the allocated property linked to his previous Signature Collection membership. None of this suggests that Signature Collection being an investment (in that it could lead to a profit) was part of his motivation. The Letter of Complaint described Signature Collection membership as being an investment, but only in the sense that it could lead to Mr M recouping some of what he paid for it. Indeed, the Letter of Complaint is largely focussed on the PR's view that Signature Collection membership was an Unregulated Collective Investment Scheme⁹.

⁷ The Time of Sale.

⁸ Mr M's recollection that the Credit Agreement consolidated an earlier loan is incorrect, it just covered the purchase price.

⁹ This suggestion 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).

- On 6 May 2025, the PR provided a copy of a handwritten note dated 28 January 2022, which it says was made during a phone call with Mr M. The call note says of the purchase at the Time of Sale, “*2018 July Fractional San Diego Honeycomb Better apt + invest + suited Janet.*” While this does suggest Signature Collection membership may have been sold as an investment, or that Mr M saw it as one, I think Mr M’s Statement is more likely to reflect his actual recollection of events, given this appears to have been written with his input and excludes any suggestion that he purchased at the Time of Sale because he wanted to make a profit.
- At the Time of Sale Mr M upgraded from his previous Signature Collection membership, for which he had paid £9,995. In doing so he traded this in and was credited with just £5,525 in the transaction, meaning he accepted a loss of £4,470 – or 44% of what he paid for it – just five months after he purchased it. There is no suggestion that he was unhappy about that, as you might have expected him to be if he saw Signature Collection membership as an investment that could lead to him making a profit.
- The Purchase Agreement also saw Mr M trade in Signature Collection membership that was equivalent to 850 fractional points every two years, for membership worth 1,220 fractional points every year. In terms of fractional points to spend on holidays each year, the purchase led to Mr M increasing his spending power by 2.8 times. Given that, it is likely this increase was a major motivation for the purchase.
- In 2020, Mr M traded in his Signature Collection membership towards purchase of Holiday Owner’s Club membership including 1,720 Vacation Club points. Vacation Club points worked (and were worth) the same as fractional points in terms of purchasing holidays. But Holiday Owner’s Club membership and Vacation Club points were not linked to a specific allocated property, so there was no prospect of Mr M getting any money back at the end of the membership term. Clearly, Mr M made that purchase to gain additional holiday rights (an increase of 40% over his Signature Collection membership). But in doing so he gave up any prospect of making a profit – while paying more for the Holiday Owner’s Club membership. That seems an odd thing to do if at the Time of Sale he purchased Signature Collection membership because he hoped or expected to make a profit. In addition to this, the trade in value when upgrading (£15,860) was again less than Mr M paid for it.
- On the point above, the PR says at the time of the purchase of Holiday Owner’s Club membership there was a lot of uncertainty due to the Covid-19 pandemic (albeit the sale was in February 2020 – before lockdown started in the UK). And that the value of an investment may be expected to fluctuate (down as well as up). But crystallising such a loss would seem a strange thing to do if Mr M had purchased it with a view to making a profit at the end of the Membership term. Even if he was unsure of what return he might get, it seems the prospect of potentially getting something would be better than the guarantee of getting nothing. Indeed, if Mr M just wanted more holiday rights but to retain the possibility a profit, he could simply have purchased an additional 500 Vacation Club points without trading in his Signature Collection membership, which would’ve cost him less. That he was willing to give up the chance of a profit (and crystallise a loss) suggests he didn’t view Signature Collection membership as an investment (as defined above).

- It was not until later in 2020 that Mr M expressed concern about being unable to use his timeshares (and what he paid for them) – which appears to have been connected to the Supplier’s sales companies going into administration and information he’d been given by third parties who had cold called him and encouraged him to engage them for the purposes of making a mis-selling claim.

This doesn’t mean Mr M wasn’t interested in a share in the Suite. After all, that wouldn’t be surprising given the nature of the product at the centre of this complaint. But as the evidence doesn’t persuade me that his purchase was motivated by his share in the Suite 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 he ultimately made.

On balance, therefore, even if the Supplier had marketed or sold the Signature Collection membership as an investment in breach of Regulation 14(3) of the Timeshare Regulations, I am not persuaded that Mr M’s decision to purchase Signature Collection membership at the Time of Sale was motivated by the prospect of a financial gain (i.e., a profit). On the contrary, I think the evidence suggests Mr M would have pressed ahead with the 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 M and the Lender was unfair to him 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 M was not given sufficient information at the Time of Sale by the Supplier about membership, including about the ongoing costs of Signature Collection membership and the fact that Mr M’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 M sufficient information, in good time, on the various charges he could have been subject to as a Signature Collection member 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 M nor the PR have persuaded me that he not have pressed ahead with his purchase had the finer details of the Signature Collection’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 M’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.

Commission: The Section 140A unfair relationship complaint

Mr M 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.
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).
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 Mr M in arguing that his credit relationship with the Lender was unfair to him 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 Mr M, nor have I seen anything that persuades me that the commission arrangement between them gave the Supplier a choice over the interest rate that led Mr M 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 think any such failure is itself a reason to find the credit relationship in question unfair to Mr M.

In stark contrast to the facts of Mr Johnson's case, the amount of commission paid by the Lender to the Supplier for arranging the Credit Agreement that Mr M entered wasn't high. At £444.97, it was only 2.5% of the amount borrowed and even less than that (2.3%) as a proportion of the charge for credit. So, if he had known at the Time of Sale that the Supplier was going to be paid a flat rate of commission at that level, I'm not persuaded that he either wouldn't have understood that or would have otherwise questioned the size of the payment at that time. After all, Mr M wanted Fractional Club membership and had no obvious means of his own to pay for it. And at such a low level, the impact of commission on the cost of the credit he needed for a timeshare he wanted doesn't strike me as disproportionate. So, I think he would still have taken out the loan to fund his 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 Mr M but as the supplier of contractual rights that he 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 him when arranging the Credit Agreement and thus a fiduciary duty.

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

Unfair relationship: Conclusion

Given all 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 Mr M and the Lender under the Credit Agreement and related Purchase Agreement was unfair to him. And as things 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 Mr M credit relationship with the Lender wasn't unfair to him for reasons relating to the commission arrangements between it and the Supplier, two of the grounds on which I came to that conclusion also constitute separate and freestanding complaints to Mr M 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 Mr M (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 Mr M 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 him. 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 he would still have taken out the loan to fund his purchase at the Time of Sale had there been more adequate disclosure of the commission arrangements that applied at that time.

END OF COPY OF PROVISIONAL FINDINGS

The PR's response to my provisional findings about an unfair relationship

My role as an Ombudsman isn't to address every single point which has been made to date, but to decide what is fair and reasonable in the circumstances of this complaint. If I haven't commented on, or referred to, something that either party has said, this doesn't mean I haven't considered it. Rather, I've focused here on addressing what I consider to be the key issues in deciding this complaint and explaining the reasons for reaching my final decision.

The PR's further comments in response to the provisional decision only relate to the issue of whether the credit relationship between Mr M and the Lender was unfair. In particular, the PR has provided further comments in relation to whether the membership was sold to Mr M as an investment at the Time of Sale.

As outlined in my provisional decision, the PR originally raised various other points of complaint, all of which I addressed in my provisional decision. But the PR didn't make any further comments in relation to those in its response to my provisional decision. Indeed, the PR hasn't said they disagree with any of my provisional findings in relation to those other points. So, 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 the PR's additional points raised.

The PR has provided further comments and evidence which in my view relate to whether Fractional Club membership was marketed or sold as an investment in breach of the prohibition in Regulation 14(3) of the Timeshare Regulations. However, as I explained in my provisional decision, while the Supplier's sales processes left open the possibility that the sales representative may have positioned Fractional Club membership as an investment, it isn't necessary to make a finding on this as it is not determinative of the outcome of the complaint. I explained that Regulatory breaches do not automatically create unfairness and that such breaches and their consequences (if there are any) must be considered in the round, rather than in a narrow or technical way.

The PR's comments and evidence in this respect do not persuade me that I should uphold Mr M's complaint, because they do not make me think it's any more likely that the Supplier's breach of Regulation 14(3) led [consumer] to enter into the Purchase Agreement and the Credit Agreement.

The PR has provided its further thoughts as to Mr M's likely motivations for purchasing Fractional Club membership. I recognise it has interpreted Mr M's evidence differently to how I have and thinks it points to him having been motivated by the prospect of a financial gain from Fractional Club membership.

In my provisional decision, I explained the reasons why I didn't think Mr M's purchase was motivated by the prospect of a financial gain (i.e., a profit). And although I have carefully considered the PR's arguments in response to this, I'm not persuaded the conclusions I reached on this point were unfair or unreasonable.

So, ultimately, for the above reasons, along with those I already explained in my provisional decision, I remain unpersuaded that any breach of Regulation 14(3) was material to Mr M's purchasing decision. And for that reason, I do not think the credit relationship between Mr M and the Lender was unfair to him even if the Supplier had breached Regulation 14(3).

Conclusion

In conclusion, I do not think that the Lender acted unfairly or unreasonably when it dealt with the relevant Section 75 claims, and I am not persuaded that the Lender was party to a credit relationship with Mr M under the Credit Agreement that was unfair to him 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 Mr M.

My final decision

For the reasons I've explained, I do not uphold this complaint.

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

Phillip Lai-Fang
Ombudsman