

The complaint

The estates of Mrs C and Mr C'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 Mrs C and Mr C 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

Mrs C and Mr C were the members of a timeshare provider (the 'Supplier') – having purchased a number of products from it over time. But the product at the centre of this complaint is their membership of a timeshare that I'll call the 'Fractional Club' – which they bought on 22 May 2015 (the 'Time of Sale'). They entered into an agreement with the Supplier to buy 8,500 fractional points at a cost of £8,075 (the 'Purchase Agreement').

Fractional Club membership was asset backed – which meant it gave Mrs C and Mr C more than just holiday rights. It also included a share in the net sale proceeds of a property named on the Purchase Agreement (the 'Allocated Property') after their membership term ends.

Mrs C and Mr C paid for their Fractional Club membership by taking finance of £8,075 from the Lender (the 'Credit Agreement').

The estates of Mrs C and Mr C – using a professional representative (the 'PR') – wrote to the Lender on 21 August 2023 (the 'Letter of Complaint') to raise a number of different concerns. As those concerns haven't changed since they were first raised, and as both sides are familiar with them, it isn't necessary to repeat them in detail here beyond the summary above.

The complaint was referred to the Financial Ombudsman Service on 13 February 2024.

The Lender issued a final response letter on 15 April 2024¹ rejecting the estates of Mrs C and Mr C's complaint on every ground.

The complaint was assessed by an Investigator who, having considered the information on file, rejected the complaint on its merits.

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

The legal and regulatory context

In considering what's fair and reasonable in all the circumstances of the complaint, I'm 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.

¹ Prior to the issue of this final response letter the Lender sent the PR on 2 January 2024 a detailed declination of its claim

The legal and regulatory context that I think is relevant to this complaint is, in many ways, no different to that shared in several hundred published ombudsman decisions on very similar complaints – which can be found on the Financial Ombudsman Service’s website. And with that being the case, it isn’t necessary to set out that context in detail here. But I would add that the following regulatory rules/guidance are also relevant.

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

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

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

The FCA’s Principles

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

- Principle 6
- Principle 7
- Principle 8

I considered the matter and issued a provisional decision (the ‘PD’) on 6 February 2026. In that decision, I said:

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 don’t currently think this complaint should be upheld.

However, before I explain why, I want to make it clear that my role as an Ombudsman isn’t to address every single point that has been made to date. Instead, it’s to decide what’s fair and reasonable in the circumstances of this complaint. So, if I haven’t commented on, or referred to, something that either party has said, that doesn’t mean I haven’t 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.

The investigator came to the view that it wouldn’t have been unreasonable for the Lender to have rejected the estates of Mrs C and Mr C’s Section 75 (misrepresentation) claim on the grounds that it was raised with it more than six years after the cause of action for such a claim accrued.

But notwithstanding I’m in agreement with the Investigator on this point I’m not persuaded that there was a factual and material misrepresentation by the Supplier in any event.

It was said in the Letter of Complaint that Fractional Club membership had been misrepresented by the Supplier at the Time of Sale because:

1. Mrs C and Mr C were told by the Supplier that Fractional Club membership had a guaranteed end date when that wasn't true.
2. Mrs C and Mr C were told by the Supplier that Fractional Club membership was an "investment" when that wasn't true.
3. Mrs C and Mr C were told by the Supplier that they would have better availability to exclusive high standard resorts.
4. It wasn't made clear to Mrs C and Mr C that the annual maintenance fees could increase over time.
5. Mrs C and Mr C were told by the Supplier that the membership was desirable and would quickly sellout and that they were being offered a heavily discounted price which would only be available on the day, when this wasn't true.

However, telling prospective members that they were investing their money because they were buying a fraction or share of one of the Supplier's properties wasn't untrue. After all, a share in an allocated property was, by its very nature, an investment. And while, as I understand it, the sale of the Allocated Property could be postponed in certain circumstances according to the Fractional Club Rules, the estates of Mrs C and Mr C say little to nothing to persuade me that Mrs C and Mr C were given a guarantee by the Supplier that the Allocated Property would be sold on a specific date when such a promise would have been impossible to stand by given the inevitable uncertainty of selling property some way into the future. And as there's nothing else on file to support the PR's allegation, I'm not persuaded that there was a representation by the Supplier on the issue in question that constituted a false statement of fact.

Regarding the lack of exclusivity and the standard of the accommodation, I've seen nothing in the documents provided that say (or imply) that the available resorts were exclusive to members or that they were of a certain standard. And while I've no doubt the Supplier would have promoted the quality of its resorts and its services more generally, I haven't seen evidence that it made specific false statements about them.

The PR submits that it wasn't made clear to Mrs C and Mr C that the annual maintenance fees could increase, but I'm satisfied that this possibility was made clear in the various documentation seen by Mrs C and Mr C and/or signed by them. Furthermore, it's not unusual for agreements of the type entered into by Mrs C and Mr C to include provisions for fee increases and no evidence has been provided which shows the charges paid by Mrs C and Mr C differed to those contractually included in the purchase Agreement.

Finally, regarding the allegation that the Supplier falsely claimed the membership was a desirable product, this appears to have been a statement of opinion, rather than fact. In order for such a statement to amount to a misrepresentation, it would normally need to be shown that the person who stated the opinion didn't hold that opinion at the time. In practice, I think this would be very difficult to prove. Furthermore, I'm aware that this particular Supplier did often offer discounted prices only available for that particular day, so this also wouldn't appear to be untrue.

So, while I recognise that the estates of Mrs C and Mr C 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 in this respect.

Section 75 of the CCA: the Supplier's Breach of Contract

I've already summarised how Section 75 of the CCA works and why it gives consumers a right of recourse against a lender. So, it isn't 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.

The estates of Mrs C and Mr C say that Mrs C and Mr C couldn't holiday where and when they wanted to – which, on my reading of the complaint, suggests that the Supplier wasn't living up to its end of the bargain, potentially breaching the Purchase Agreement.

Yet, like any holiday accommodation, availability wasn't unlimited – given the higher demand at peak times, like school holidays for instance. Some of the sales paperwork likely to have been signed by Mrs C and Mr C states that the availability of holidays was/is subject to demand. It also looks like they made use of their fractional points to holiday on a number of occasions. I accept that they may not have been able to take certain holidays. But I've not seen enough to persuade me that the Supplier had breached the terms of the Purchase Agreement.

The PR also says on the estates of Mrs C and Mr C's behalf that the Supplier breached the Purchase Agreement because it went into liquidation. And if certain parts of the Supplier's business were put into administration, I can understand why the PR is alleging that there was a breach of the Purchase Agreement as a result. However, neither the estates of Mrs C and Mr C nor the PR have said, suggested or provided evidence to demonstrate that as a result of the Supplier going into liquidation Mrs C and Mr C were no longer:

1. members of the Fractional Club;
2. able to use their Fractional Club membership to holiday in the same way they could initially; and
3. entitled to a share in the net sales proceeds of the Allocated Property when their Fractional Club membership ends.

So, from the evidence I've seen, I don't think the Lender is liable to pay the estates of Mrs C and Mr C any compensation for a breach of contract by the Supplier. And with that being the case, I don't think the Lender acted unfairly or unreasonably in this respect.

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 Mrs C and Mr C 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've 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 inherent probabilities of the sale given its circumstances; and, when relevant
5. Any existing unfairness from a related credit agreement.

I've then considered the impact of these on the fairness of the credit relationship between Mrs C and Mr C and the Lender.

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

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

The PR says, for instance that:

1. the right checks weren't carried out before the Lender lent to Mrs C and Mr C; and
2. Mrs C and Mr C were pressured by the Supplier into purchasing Fractional Club membership at the Time of Sale.

However, as things currently stand, neither of these strike me as reasons why this complaint should succeed.

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 Mrs C and Mr C 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'm not satisfied that the lending was unaffordable for Mrs C and Mr C.

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

Overall, therefore, I don't think that Mrs C and Mr C'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

A share in the Allocated Property clearly constituted an investment as it offered Mrs C and Mr C the prospect of a financial return – whether or not, like all investments, that was more than what they first put into it. But it's important to note at this stage that the fact that Fractional Club membership included an investment element didn't, 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 didn't 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 Mrs C and Mr C as an investment in breach of Regulation 14(3), I've 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.

And 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's 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 Mrs C and Mr C, 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.

But 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 Mrs C and Mr C as an investment in breach of Regulation 14(3).

However, whether or not there was a breach of the relevant prohibition by the Supplier isn't ultimately determinative of the outcome in this complaint for reasons I will come on to shortly. And with that being the case, it's not necessary to make a formal finding on that particular issue for the purposes of this decision.

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

Having found that it was possible that the Supplier breached Regulation 14(3) of the Timeshare Regulations at the Time of Sale, I now need to consider what impact that breach (if there was one) had on the fairness of the credit relationship between Mrs C and Mr C and the Lender under the Credit Agreement and related Purchase Agreement, as the case law on Section 140A makes it clear that regulatory breaches don't 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'm to conclude that a breach of Regulation 14(3) led to a credit relationship between Mrs C and Mr C 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.

But on my reading of the evidence before me, the prospect of a financial gain from Fractional Club membership wasn't an important and a motivating factor when Mrs C and Mr C decided to go ahead with their purchase. I say that having read and considered their testimony.

This was compiled by the PR and dated 15 August 2019. It sets out Mrs C and Mr C's recollections of their entire relationship with the Supplier between 2002 and 2015. As regards their purchase of the Fractional Club at the Time of Sale Mrs C and Mr C say:

"In May 2015 we were on holiday... While we were there, we were approached and asked to come along for a meeting and a catch up on how we were getting on with our current points etc. The meeting lasted around a couple of hours. He began telling us that if we bought some more points this would allow us to get the best apartments that they had available across their wide range of resorts. They also said that because we would be buying an extra week this would give us much better options and we would have better availability, and this would solve the problems we were having. They also told us that if we decided we didn't want it anymore or, if we wanted to keep one week and sell another, they would be able to sell it on our behalf. This was something we later learned was completely untrue, they didn't even try and sell it for us there was always an excuse, not the right time for selling etc. At this time, we did feel a lot of pressure to make a purchase they assured us that this would be a good investment, and we would make some money on it if we sold in the future."

I accept that Mrs C and Mr C, in the above, say that the Supplier told them that the purchase would be a good investment, but they don't say that this representation was a motivating factor in their purchasing decision. And had it have been I might have expected them to have said so and in some detail.

Furthermore having considered everything Mrs C and Mr C say in the above it seems to me that they entered into the membership because of what they understood would be the type and quality of holiday it would give them and what it would give them compared to their previous membership. And in my view this is supported by Mrs C and Mr C's closing statement paragraph where they say:

"Since this has happened, we have always had difficulties trying to book our timeshare holidays. If we were every explained this at the time of purchase, we would not have bought anymore points."

For the avoidance of doubt I haven't (nor can I) discount the PR's submissions in this case. But these submissions are identical in nearly all respects to other complaints I've seen from it on behalf of other complainants. In other words, they are very generic in nature and I'm not persuaded I can attach much weight to them.

The above doesn't mean Mrs C and Mr C 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 Mrs C and Mr C 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'm not persuaded that Mrs C and Mr C'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 don't think the credit relationship between Mrs C and Mr C 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 Mrs C and Mr C weren't given sufficient information at the Time of Sale by the Supplier in order to make an informed choice.

It isn't clear what information the PR thinks the Supplier failed to provide at the Time of Sale. But as I've already indicated, the case law on Section 140A makes it clear that it doesn't 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.

So, while I acknowledge that it's also possible that the Supplier didn't give Mrs C and Mr C sufficient information, in good time, in order to satisfy the requirements of Regulation 12 of the Timeshare Regulations (which was concerned with the provision of 'key information'), even if that was the case, neither the estates of Mrs C and Mr C nor the PR have persuaded me that Mrs C and Mr C were deprived of information that would have led them to make a different purchasing decision at the Time of Sale. And with that being the case, even if there were information failings (which I make no formal finding on), I can't see why they led to an unfair credit relationship as a result.

The PR also 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 didn't 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, isn't 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 the estates of Mrs C and Mr C in arguing that Mrs C and Mr C's credit relationship with the Lender was unfair to them for reasons relating to commission given the facts and circumstances of this complaint.

As the Supreme Court said in paragraph 326 of its judgment in *Hopcraft, Johnson and Wrench*, it's not possible to simply apply the reasoning of the Supreme Court in *Plevin v Paragon Personal Finance Ltd* [2014] UKSC 61 ('*Plevin*') to this complaint (as the PR does) when it's concerned with a product and marketplace that were very different to those in *Plevin*. What's more, Mrs C and Mr C were provided with information as to the price of Fractional Club membership and the cost of the Credit Agreement (interest rate, fees, APR and monthly repayments). So, they were at least in a position from which they could understand the cost of the Credit Agreement and compare it with other options that might have been available at the Time of Sale.

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 C and Mr C, 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 C and Mr C 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 don't 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's 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 C and Mr C.

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 C and Mr C entered into wasn't high. At most it was only 8% of the amount borrowed and 10.38% as a proportion of the charge for credit. So, had they 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 they either wouldn't have understood that or would have otherwise questioned the size of the payment at that time. After all, Mrs C and Mr C wanted Fractional Club membership and had no obvious means of their own to pay for it. And at such a low level, the impact of commission on the cost of the credit they needed for a timeshare they wanted doesn't strike me as disproportionate. So, I think they would still have taken out the loan to fund their purchase at the Time of Sale had the amount of commission been disclosed.

What's more, based on what I've seen so far, the Supplier's role as a credit broker wasn't a separate service and distinct from its role as the seller of timeshares. It was simply a means to an end in the Supplier's overall pursuit of a successful timeshare sale. I can't see that the Supplier gave an undertaking – either expressly or impliedly – to put to one side its commercial interests in pursuit of that goal when arranging the Credit Agreement. And as it wasn't acting as an agent of Mrs C and Mr C 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.

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 C and Mr C.

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 C and Mr C and the Lender under the Credit Agreement and related Purchase Agreement was unfair to them. And as things currently stand, I don't think it would be fair or reasonable that I uphold this complaint on that basis.

Commission: The Alternative Grounds of Complaint

While I've found that Mrs C and Mr C's credit relationship with the Lender wasn't unfair to them 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 C and Mr C'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 C and Mr C (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 C and Mr C 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 them. 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 they would still have taken out the loan to fund their purchase at the Time of Sale had there been more adequate disclosure of the commission arrangements that applied at that time.

Overall Conclusion

In conclusion, given the facts and circumstances of this complaint, I don't think that the Lender acted unfairly or unreasonably when it dealt with Mrs C and Mr C's Section 75 claims, and I'm not persuaded that the Lender was party to a credit relationship with them under the Credit Agreement and related Purchase Agreement that was unfair to them 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 the estates of Mrs C and Mr C.

The Lender responded to the PD to say it accepted it.

The PR provided submissions from the estates of Mrs C and Mr C in response to the PD, including statements from Mrs C and Mr C's two children. The estates of Mrs C and Mr C disagreed with the PD. In summary it said:

- It was concerned that I had concluded that its submissions to date had been very generic and that I couldn't attach much weight to them.
- The Credit Agreement, as evidenced by "*the lack of repayment*" shows it was unaffordable.
- Mrs C and Mr C's primary motivation to purchase Fractional Club membership was their understanding it constituted an investment and that it would provide a financial legacy for their two children.

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.

The first thing for me to say is that I didn't say in the PD that I found Mrs C and Mr C's testimony to be generic, or that I was unable to attach much weight to it. What I said was I found the **PR's** [my emphasis] submissions to be generic and that I wasn't persuaded I could attach much weight to them. And for the avoidance of doubt I can confirm I remain of the same view in this respect.

I've reviewed Mrs C and Mr C's Credit Agreement transaction history and can see that they never missed a monthly repayment and repaid the debt in full over a year early. So with this in mind, and in the absence of any documentary evidence to the contrary, I can confirm I remain of the view that the lending wasn't unaffordable for Mrs C and Mr C.

I would like to thank Mrs C and Mr C's two children for taking the time to provide written statements in support of the estate of Mrs C and Mr C's complaint. However, and I mean no discourtesy, I'm simply not persuaded I can attach much weight to these, if any. I say this for the following reasons:

- ‘Third party’ statements and recollections simply don’t carry the same weight as ‘first party’ statements and recollections.
- These statements have been provided more than ten years after Mrs C and Mr C made their purchase, leading me to conclude that there is a real risk that memories and recollections have, understandably, faded over time.
- These statements have been provided following the outcome in *Shawbrook & BPF v FOS*, and the PD not upholding the complaint, leading me to conclude that there is a real risk that both these things have had a bearing on the content of the provided statements.
- Had Mrs C and Mr C’s children been told (by Mrs C and Mr C) what they say they were, I would have expected the same to have been reflected in Mrs C and Mr C’s own testimony and in the same detail and depth, but it wasn’t.

So in summary I can confirm that I see no reason to depart from my provisional findings and I now confirm them as final. That is, given the facts and circumstances of this complaint, I don’t think that the Lender acted unfairly or unreasonably when it dealt with Mrs C and Mr C’s Section 75 claims, and I’m not persuaded that the Lender was party to a credit relationship with them under the Credit Agreement and related Purchase Agreement that was unfair to them 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 the estates of Mrs C and Mr C.

My final decision

My final decision is I don’t uphold this complaint.

Under the rules of the Financial Ombudsman Service, I’m required to ask the estates of Mrs C and Mr C to accept or reject my decision before 18 March 2026.

Peter Cook
Ombudsman