DRN-6144612

The complaint

Mr O's complaint is, in essence, that Clydesdale Financial Services Limited trading as Barclays Partner Finance (the 'Lender') acted unfairly and unreasonably by (1) being party to an unfair credit relationship with him 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.

Background to the complaint

Mr O and his wife Mrs O were 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 11 August 2016 (the 'Time of Sale'). They entered into an agreement with the Supplier to buy 800 fractional points which, after trading in their existing membership, cost £14,108 (the 'Purchase Agreement').

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

Mr and Mrs O paid for their Fractional Club membership by taking finance of £17,387 from the Lender (the 'Credit Agreement') in Mr O's name only. As Mr O was the only borrower named on the Credit Agreement, this complaint has been brought in his name only.

Mr O – using a professional representative (the 'PR') – wrote to the Lender on 23 February 2022 (the 'Letter of Complaint') to raise a number of different concerns. As those concerns haven't changed since they were first raised, and as both sides are familiar with them, it isn't necessary to repeat them in detail here beyond the summary above.

The Lender acknowledged Mr O's concerns as a complaint, but it did not go on to provide a final response.

The complaint was subsequently referred to the Financial Ombudsman Service. It was assessed by an Investigator who, having considered the information on file, rejected the complaint on its merits.

Mr O disagreed with the Investigator's assessment and asked for an Ombudsman's decision. So the complaint was passed to me to decide. I considered the matter and issued a provisional decision (the 'PD') dated 30 January 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 do not currently 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's to decide what's 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.

The legal and regulatory context

In considering what's fair and reasonable in all the circumstances of the complaint, I'm required under DISP 3.6.4 R 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, 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's not 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*

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 does not dispute that the relevant conditions are met. But for reasons I'll come on to below, it's not necessary to make any formal findings on them here.

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

1. *Told that he had purchased an investment that would "considerably appreciate in value."*

2. *Promised a considerable return on his investment because he was told that he would own a share in a property that would considerably increase in value.*

3. *Told that he could sell his Fractional Club membership to the Supplier or easily to third parties at a profit.*

4. *Made to believe that he would have access to "the holiday apartment" at any time all year round.*

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

As for points 3 and 4, while it's possible that Fractional Club membership was misrepresented at the Time of Sale for one or both of those reasons, I don't think it's probable. They're given little to none of the colour or context necessary to demonstrating that the Supplier made false statements of existing fact and/or opinion. And as there isn't any other evidence on file to support the suggestion that Fractional Club membership was misrepresented for these reasons, I don't think it was.

So, while I recognise that Mr O - 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 I don't think the Lender acted unreasonably or unfairly when it dealt with this particular Section 75 claim.

Section 140A of the CCA: did the Lender participate in an unfair credit relationship?

I've already explained why I'm not persuaded that Fractional Club membership was actionably misrepresented by the Supplier at the Time of Sale. But there are other aspects of the sales process that, being the subject of dissatisfaction, I must explore with Section 140A in mind if I'm to consider this complaint in full – which is what I've done next.

Having considered the entirety of the credit relationship between Mr O 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, when relevant*

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 O and the Lender.

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

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

The PR says that the right checks weren't carried out before the Lender lent to Mr O. I have not seen anything to persuade me that was the case in this complaint given its circumstances. But even if I were to find that the Lender failed to do everything it should have when it agreed to lend (and I make no such finding), I would have to be satisfied that the money lent to Mr O 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 him for this reason. But from the information provided, I'm not satisfied that the lending was unaffordable for Mr O.

Connected to this is the suggestion by the PR that the person(s) the Credit Agreement was arranged by were self-employed and unauthorised to broker credit in their own right, 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 O knew, amongst other things, how much he was borrowing and repaying each month, who he was borrowing from and that he was borrowing money to pay for Fractional Club membership. And as the lending doesn't look like it was unaffordable for him, even if the Credit Agreement was arranged by a broker that didn't have the necessary permission to do so (which I make no formal finding on), I can't see why that led to Mr O experiencing a financial loss – such that I can say that the credit relationship in question was unfair on him 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 him, even if the loan wasn't arranged properly.

The PR also says that there were one or more unfair contract terms in the Purchase Agreement. But as I can't see that any such terms were operated unfairly against Mr O in practice, nor that any such terms led him to behave in a certain way to his detriment, I'm not persuaded that any of the terms governing Fractional Club membership are likely to have led to an unfairness that warrants a remedy.

I acknowledge that Mr O 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 their sales presentation that made him feel as if he had no choice but to purchase Fractional Club membership when he simply did not want to. He was also likely 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 O made the decision to purchase Fractional Club membership because his ability to exercise that choice was significantly impaired by pressure from the Supplier.

Overall, therefore, I don't think that Mr O's credit relationship with the Lender was rendered unfair to him under Section 140A for any of the reasons above. But there is another reason, perhaps the main reason, why the PR says the credit relationship with the Lender was unfair to him. And that's the suggestion that Fractional Club membership was marketed and sold to him as an investment in breach of the 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'm satisfied, that Mr O'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 says the Supplier did exactly that at the Time of Sale – saying, in summary, that Mr O was 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 O the prospect of a financial return – whether or not, like all investments, that turned out to be more than what he first put into it. But it's 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 does not prohibit the mere existence of an investment element in a timeshare contract, or prohibit the marketing and selling of such a timeshare contract per se.

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

To conclude, therefore, that Fractional Club membership was marketed or sold to Mr O as an investment in breach of Regulation 14(3), I have to be persuaded it was more likely than not that the Supplier marketed and/or sold membership to him as an investment, i.e. told him or led him to believe that Fractional Club membership offered him 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'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 Mr O, 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 the Supplier's sales process left open the possibility that the sales representative(s) may have positioned Fractional Club membership as an investment. So, I accept it's also possible that Fractional Club membership was marketed and sold to Mr O as an investment in breach of Regulation 14(3).

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

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

Having found 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 O 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'm to conclude that a breach of Regulation 14(3) led to a credit relationship between Mr O and the Lender that was unfair to him and warranted relief as a result, whether the Supplier's breach of Regulation 14(3) led him to enter into the Purchase Agreement and the Credit Agreement is an important consideration.

But it was only after the Investigator issued their view, and after the judgment in R (on the application of Shawbrook Bank Ltd) v Financial Ombudsman Service Ltd and R (on the application of Clydesdale Financial Services Ltd (t/a Barclays Partner Finance)) v Financial Ombudsman Service [2023] EWHC 1069 (Admin) ('Shawbrook & BPF v FOS') was handed down, that Mr O recalled that the Supplier led him to believe that Fractional Club membership offered him the prospect of a financial gain. And as experience tells me that, the more time that passes between a complaint and the event complained about, the more risk there is of recollections being vague, inaccurate and/or influenced by discussion with others, I find it difficult to understand why the Financial Ombudsman Service was only given such evidence when it was.

Indeed, as there isn't any other evidence on file to corroborate Mr O's very recent evidence about his motivations at the Time of Sale, there seems to me to be a very real risk that Mr O's recollections were coloured by the Investigator's view and the judgment in Shawbrook & BPF v FOS. And with that being the case, I'm not persuaded that I can give his written recollections the weight necessary to finding the credit relationship in question was unfair for reasons relating to a breach of the relevant prohibition.

That does not mean he was not 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 O himself does not persuade me that his purchase was motivated by his share in the Allocated Property and the possibility of a profit, I do not 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 Fractional Club membership as an investment in breach of Regulation 14(3) of the Timeshare Regulations, I'm not persuaded that Mr O'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). And for that reason, I do not think the credit relationship between Mr O and the Lender was unfair to him even if the Supplier had breached Regulation 14(3).

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 Mr O and the Lender under the Credit Agreement and related Purchase Agreement was unfair to him. And as things currently stand, I do not think it would be fair or reasonable that I uphold this complaint on that basis."

In conclusion, given the facts and circumstances of this complaint, I did not think that the Lender acted unfairly or unreasonably when it dealt with Mr O's Section 75 claim, and I was not persuaded that the Lender was party to a credit relationship with him under the Credit Agreement that was unfair to him for the purposes of Section 140A of the CCA. And having taken everything into account, I could see no other reason why it would be fair or reasonable to direct the Lender to compensate him.

I gave both parties the opportunity to respond to the PD. The PR responded stating it did not accept the PD, and it provided some further comments and evidence it wished to be considered. The Lender confirmed it accepted the PD and had nothing further to add.

As the parties have now had the opportunity to respond to the PD, and having received the responses I mentioned above, I'm now finalising my decision on this complaint.

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 and having done so, I've reached the same decision as that which I outlined in my provisional findings, for broadly the same reasons.

Again, my role as an Ombudsman is not to address every single point which has been made to date, but to decide what's fair and reasonable in the circumstances of this complaint. If I have not commented on, or referred to, something that either party has said, this does not mean I have not 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 PD in the main relate to the issue of whether the credit relationship between Mr O and the Lender was unfair to him. In particular, the PR has provided further comments in relation to whether the membership was sold to him as an investment at the Time of Sale, and uncertainty in the sales documentation around the proposed sale date of the Allocated Property. It has also now argued for the first time that the payment of a commission by the Lender to the Supplier led to an unfair credit relationship.

As outlined in my PD, the PR originally raised various other points of complaint, all of which I addressed at that time. But it didn't make any further comments in relation to all of those points in its response to my PD. Indeed, it hasn't said it disagrees with any of my provisional conclusions in relation to those other points. Since I have not been provided with anything more in relation to those other points by either party, I see no reason to change my conclusions in relation to them as set out in my PD. So, I'll focus here on the PR's points raised in its response.

Section 140A of the CCA: did the Lender participate in an unfair credit relationship?

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

The PR explained in its response to my PD that it hadn't shared the Investigator's view on this complaint with Mr O, saying "*this was a deliberate step to ensure that* [his] *recollections remained entirely* [his] *own and were not influenced by external documents."*

The PR also said that even if Mr O had heard or read something about the judgment handed down in *Shawbrook and BPF v FOS* he would not have understood it because of the complexity of the issues and as he does not have a legal background. The PR said this means Mr O's recollections have not been influenced by either the Investigator's view or the aforementioned judgment.

Part of my assessment of Mr O's testimony was to consider *when* it was written, and whether it may have been affected by external factors such as the widespread publication of the outcome of *Shawbrook and BPF v FOS*.

I have thought about what the PR has said, but on balance, I don't find it a credible explanation of the contents of Mr O's evidence. Here, the PR responded to our Investigator's view to say that Mr O alleged that Fractional Club membership had been sold to him as an investment and it provided evidence from Mr O to that effect. I fail to understand how Mr O disagreed with the view on the basis that the timeshare was sold as an investment if he didn't know our Investigator's conclusions. It follows, I think it's more likely than not, that Mr O did know about our Investigator's view before his evidence was provided.

So, I maintain that there is a risk that Mr O's testimony was coloured by the Investigator's view and/or the outcome in *Shawbrook & BPF v FOS*. And, on balance, the way in which the evidence has been provided makes me conclude that I can place little weight on it. So, ultimately, for the above reasons, along with those I already explained in my PD, I remain unpersuaded that any breach of Regulation 14(3) was material to Mr O's purchasing decision.

The PR also said that in the judgment handed down in *Shawbrook & BPF v FOS*, it was not challenged that the product in question was marketed and sold as an investment. But, as I explained in my PD, the Timeshare Regulations did not ban products such as the Fractional Club. They just regulated how such products were marketed and sold. And the judgment referred to did not make a blanket finding that all such products were mis-sold in the way the PR appears to be suggesting. Any complaint needs to be considered in the light of its specific circumstances.

So, as I said before, even if the Supplier had marketed or sold the membership as an investment in breach of Regulation 14(3) (which I still make no finding on here), I'm not persuaded Mr O's decision to make the purchase was motivated by the prospect of a financial gain. So, I still don't think the credit relationship between him and the Lender was unfair to him for this reason.

<u>The provision of information by the Supplier at the Time of Sale</u>

The PR says that a payment of commission from the Lender to the Supplier at the Time of Sale should lead me to uphold this complaint because, simply put, information in relation to that payment went undisclosed at the Time of Sale.

As both sides already know, the Supreme Court handed down an important judgment on 1 August 2025 in a series of cases concerned with the issue of commission: *Johnson v FirstRand Bank Ltd, Wrench v FirstRand Bank Ltd and Hopcraft v Close Brothers Ltd [2025] UKSC 33* ('*Hopcraft, Johnson and Wrench*').

The Supreme Court ruled that, in each of the three cases, the commission payments made to car dealers by lenders were legal, as claims for the tort of bribery, or the dishonest assistance of a breach of fiduciary duty, had to be predicated on the car dealer owing a fiduciary duty to the consumer, which the car dealers did not owe. A "disinterested duty", as described in *Wood v Commercial First Business Ltd & ors and Business Mortgage Finance 4 plc v Pengelly* [2021] EWCA Civ 471, is not enough.

However, the Supreme Court held that the credit relationship between the lender and Mr Johnson was unfair under Section 140A of the CCA because of the commission paid by the lender to the car dealer. The main reasons for coming to that conclusion included, amongst other things, the following factors:

1. The size of the commission (as a percentage of the total charge for credit). In Mr Johnson's case it was 55%. This was *"so high"* and *"a powerful indication that the relationship…was unfair"* (see paragraph 327);

2. The failure to disclose the commission; and

3. The concealment of the commercial tie between the car dealer and the lender.

The Supreme Court also confirmed that the following factors, in what was a non-exhaustive list, will normally be relevant when assessing whether a credit relationship was/is unfair under Section 140A of the CCA:

1. The size of the commission as a proportion of the charge for credit;

2. The way in which commission is calculated (a discretionary commission arrangement, for example, may lead to higher interest rates);

3. The characteristics of the consumer;

4. The extent of any disclosure and the manner of that disclosure (which, insofar as Section 56 of the CCA is engaged, includes any disclosure by a supplier when acting as a broker); and

5. Compliance with the regulatory rules.

From my reading of the Supreme Court's judgment in *Hopcraft, Johnson and Wrench*, it sets out principles which apply to credit brokers other than car dealer–credit brokers. So, when considering allegations of undisclosed payments of commission like the one in this complaint, *Hopcraft, Johnson and Wrench* is relevant law that I'm required to consider under DISP 3.6.4 R.

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

I acknowledge 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's 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 was unfair to Mr O.

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 O entered into wasn't high. At £434.68, it was only 2.5% of the amount borrowed and even less than that (2.32%) as a proportion of the charge for credit. So, had Mr O 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 O 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, 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 O but as the supplier of contractual rights 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 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 O.

The PR has also said there is ambiguity in the proposed sale date of the Allocated Property. It suggests that a delayed sale date could lead to an unfairness to Mr O in the future, as any delay could mean a delay in the realisation of his share in the Allocated Property.

It does appear that the proposed date for the commencement of the sales process, as set out on the 'Fractional Rights Certificate' and likely repeated on the 'Member's Declaration' which Mr O would have seen at the Time of Sale, is 31 December 2031. This date indicates that the membership has a term of around 15 years. The ambiguity identified by the PR is that in the Information Statement provided as part of the purchase documentation it says the following:

> "*The Owning Company will retain such Allocated Property until the automatic sale date in **19 years time** or such later date as is specified in the Rules or the Fractional Rights Certificate.*" (bold my emphasis).

It seems clear to me that the commencement date for the start of the sales process is 31 December 2031. This actual date was likely repeated in the sales documentation as I've set out above. In any event, it does not seem to me that the length of membership term was an important factor to Mr O that he relied on when deciding to purchase membership. So, I can't see that this is a reason to find the credit relationship was unfair to Mr O.

S140A: 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 Mr O and the Lender under the Credit Agreement and related Purchase Agreement was unfair to him. So, I don't think it's fair or reasonable that I uphold this complaint on that basis.

Commission: The alternative grounds of complaint

While I've found that Mr O's 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 O'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 Mr O (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 O 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 itself 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 Mr O 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.

Overall Conclusion

Given the facts and circumstances of this complaint, I do not think that the Lender acted unfairly or unreasonably when it dealt with Mr O's Section 75 claim, and I'm not persuaded that the Lender was party to a credit relationship with him under the Credit Agreement that was unfair to him 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 him.

My final decision

For the reasons set out above, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O to accept or reject my decision before 11 March 2026.

Asa Burnett
Ombudsman