DRN-6146876

The complaint

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

Background to the Complaint

Mrs D, along with her now late partner, Mr S, purchased membership of a timeshare (the 'Fractional Club') from a timeshare provider (the 'Supplier') on 13 August 2013 (the 'Time of Sale'). They entered into an agreement with the Supplier to buy 1,750 fractional points at a cost of £24,011[1] (the 'Purchase Agreement'). After trading in an existing membership, the Fractional Club membership cost £7,500.

Fractional Club membership was asset backed – which meant it gave Mrs D and Mr S 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 D and Mr S paid for their Fractional Club membership by taking finance of £23,426 from the Lender (the 'Credit Agreement'), which included the consolidation of the balance of an existing loan that was used to pay for a previous membership.

Mrs D and Mr S – using a professional representative (the 'PR') – wrote to the Lender on 12 December 2019 (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 dealt with Mrs D and Mr S's concerns as a complaint and issued its final response letter, rejecting it on every ground.

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

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

As the loan was yet to be repaid in full at the time that Mr S passed away, Mrs D is the only eligible complainant, but I will also refer to Mr S where I feel it is necessary to do so.

I issued my provisional decision (the 'PD') to the parties on 11 December 2025. In my PD, I said:

[1] In the Letter of Complaint, the PR has incorrectly provided the time of sale as 30 August 2013 and the cost of the membership as £41,002. I have taken the information from the Purchase Agreement.

"I have considered all the available evidence and arguments to decide what is 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 is to decide what is fair and reasonable in the circumstances of this complaint. So, if I have not commented on, or referred to, something that either party has said, that does not mean I have not considered it.

Section 75 of the CCA: the Supplier's misrepresentations at the Time of Sale

Mrs D's claims under Section 75 CCA are "like" claims against the Lender which mirror the claims she could make against the Supplier. And so, it wouldn't be fair to expect the Lender to pay claims that arose after such a limitation defence would be available to the Supplier in court. As such, it's a relevant for me to consider whether Mrs D's claims were time-barred under the Limitation Act 1980 (the 'LA') before she first raised them with the Lender.

A claim for misrepresentation against the Supplier would ordinarily be made under Section 2(1) of the Misrepresentation Act 1967, and the limitation period to make such a claim expires six years from the date on which the cause of action accrued.

Mrs D's claim is subject to the limitation periods set out under Sections 2 and 9 of the LA, which are both six years from the date on which the cause of action accrued.

The date on which the cause of action accrued was at the Time of Sale. I say this because Mrs D and Mr S entered into the Purchase Agreement at that time based on alleged misrepresentations of the Supplier, which Mrs D now says they relied upon when deciding whether or not to make the purchase. And the Credit Agreement was used to finance the purchase, so it was when Mrs D and Mr S entered into this that they suffered a loss.

Mrs D and Mr S first notified the Lender of the claims against it on 12 December 2019, which was more than six years after the Time of Sale. With that being the case, I don't think it was unfair or unreasonable of the Lender to decline to pay the claim they made against it for the Supplier's alleged misrepresentations.

I am aware that the witness statement contains the date 22 May 2017 in its file name, and the Supplier also says that it received a letter from the PR in February 2017. But while this would appear to show that the PR had done something on Mrs D and Mr S's behalf about the membership within six years of the Time of Sale, it did not raise the claims against the Lender within that time.

Mrs D can also raise "like" claims against the Lender in the event that the Supplier breaches the contract. As she says she and Mr S were unable to book the holidays they were told they could book, I think she is saying the Supplier breached the contract with them and she thinks the Lender ought to pay her claim.

The limitation period for these claims is also six years, as set out in the LA, but the dates on which the causes of action accrued are not necessarily the same dates as for the claims about the alleged misrepresentation. Rather, the cause of action accrued when Mrs D alleges the breach of contract took place.

As Mrs D says she and Mr S were not able to book the holidays they were promised, I think this put them on notice that the Supplier may have breached the contract with them. And I think this would have become apparent to them soon after they entered into the Purchase

Agreement. So, I don't think the Lender acted unfairly or unreasonably when it declined to pay the claim Mrs D made against it for the Supplier's alleged breach of contract.

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 D 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:

- *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;*
- *The provision of information by the Supplier at the Time of Sale, including the contractual documentation and disclaimers made by the Supplier;*
- *Evidence provided by both parties on what was likely to have been said and/or done at the Time of Sale; and*
- *The inherent probabilities of the sale given its circumstances.*

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

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

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

They include, for various reasons, the allegation that the Supplier misled Mrs D and Mr S and carried on unfair commercial practices under Regulations 5 and 6 of the CPUT Regulations. However, as Regulations 5 and 6 state, commercial practices only amount to misleading actions or omissions if, in addition to satisfying one or more of the specific matters set out in those provisions, they cause or are likely to cause the average consumer to take a transactional decision they would not have taken otherwise. And as I haven't seen enough evidence to persuade me that, if there were any such actions or omissions at the Time of Sale (which I make no formal finding on), they led Mrs D to make the purchasing decision she and Mr S did, I'm not persuaded that anything done or nor done by the Supplier amounted to an unfair commercial practice for the purposes of those provisions.

The PR also alleges that the Supplier acted unfairly under Regulation 7 Schedule 1 of the CPUT Regulations. But given the limited evidence in this complaint, I am not persuaded that the Supplier did.

In addition, the PR also says that:

- *the right checks weren't carried out before the Lender lent to Mrs D and Mr S.*
- *Mrs D and Mr S were pressured by the Supplier into purchasing Fractional Club membership at the Time of Sale.*
- *there was one or more unfair contract terms in the Purchase Agreement.*

However, as things currently stand, none 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 D and Mr S was actually unaffordable before also concluding that they lost out as a result and then consider whether the credit relationship with the Lender was unfair to them for this reason. But from the information provided, I am not satisfied that the lending was unaffordable for Mrs D and Mr S.

I acknowledge that Mrs D and Mr S may have felt weary after a sales process that went on for a long time. But Mrs D says little about what was said and/or done by the Supplier during the sales presentation that made her and Mr S feel as if they had no choice but to purchase Fractional Club membership when they simply did not want to. They were also given a 14-day cooling off period and they have not provided a credible explanation for why they did not cancel their membership during that time. And with all of that being the case, there is insufficient evidence to demonstrate that Mrs D and Mr S 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 D's credit relationship with the Lender was rendered unfair to her 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 her and Mr S. And that's the suggestion that Fractional Club membership was marketed and sold to her and Mr S as an investment in breach of prohibition against selling timeshares in that way.

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

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

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

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

But the PR and Mrs D say that the Supplier did exactly that at the Time of Sale – saying, in summary, that they were told by the Supplier that Fractional Club membership was the type of investment that would only increase in value.

The term "investment" is not defined in the Timeshare Regulations. But for the purposes of this provisional decision, and by reference to the decided authorities, an investment is a transaction in which money or other property is laid out in the expectation or hope of financial gain or profit.

A share in the Allocated Property clearly constituted an investment as it offered Mrs D and Mr S the prospect of a financial return – whether or not, like all investments, that was more than what they first put into it. But it is important to note at this stage that the fact that Fractional Club membership included an investment element did not, itself, transgress the prohibition in Regulation 14(3). That provision prohibits the marketing and selling of a

timeshare contract as an investment. It doesn't prohibit the mere existence of an investment element in a timeshare contract or prohibit the marketing and selling of such a timeshare contract per se.

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

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

On the one hand, it is clear that the Supplier made efforts to avoid specifically describing membership of the Fractional Club as an 'investment' or quantifying to prospective purchasers, the financial value of their share in the net sales proceeds of the Allocated Property along with the investment considerations, risks and rewards attached to them.

On the other hand, I acknowledge that the Supplier's sales process left open the possibility that the sales representative may have positioned Fractional Club membership as an investment. So, I accept that it's equally possible that Fractional Club membership was marketed and sold to Mrs D and Mr S as an investment in breach of Regulation 14(3).

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

Was the credit relationship between the Lender and the Consumer 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 Mrs D and Mr S 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 Mrs D and Mr S 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 was not an important and motivating factor when Mrs D and Mr S decided to go ahead with their purchase. I will explain why I have reached that conclusion.

I have been provided testimony with Mrs D and Mr S's name on it, and although it is not signed or dated, the file name contains the date 22 May 2017. So, I think this is likely to have

been provided by them at that time, which is before the time they raised their complaint with the Lender. The part that I think is most relevant to the sale in question says:

"26. We booked our free week and went to [Resort Name] in Scotland in September 2013[2].

27. We had to go to a presentation. We did not get breakfast but we received a voucher for a free meal.

28. We were told that fractional was a better deal than points as it was "bricks and mortar". We would have something tangible. A "tangible asset". We would own part of something.

29. We were told [the Supplier] had a resale program and we could sell it if our circumstances changed. We assumed this was through [the Supplier]. Fractional was easy to sell as it was property.

30. The sale date on the schedule that says that [the Supplier] will start the sales process on 31st December 2031. We would get our money back. We could sell this beforehand which was of great interest as we hoped our so would go to university and we could help to finance him by selling the property.

31. We said we were interested in trading but it would depend upon the price. They went away to discuss this and came back with an offer, as they had someone who wanted to sell so we would get this for £1,500 less.

32. We decided to purchase as we felt this was a good investment, we were in the UK so all secure. We had got a good deal and we were told by the salespeople to trade to "protect ourselves" as this was not timeshare it was property and we could sell it when we wanted to.

33. We were then taken to an office to sign the documents. We were given the documents to initial and sign, we did not get the chance to read them properly. We felt rushed as we were told that we should sign as a confirmation of what we have told you."

Here, Mrs D and Mr S recalled being told that they could resell their membership at any time, but I have not seen sufficient evidence to persuade me that the Supplier emphasised that the membership could be resold, or that doing so could lead to them making money. I note that they say they were told the membership was discounted because an existing member wanted to sell, so I find it difficult to explain why they thought they could sell it in the future at a higher price themselves. I also note that Mrs D and Mr S said that they were told they would get their money back after the sale of the allocated property after 2031, rather than make a profit, so I am not persuaded that they were told that they could make a profit from the sale, either at the end of the term, or at any time prior to then. Lastly, they said that they felt the Fractional Club was a good investment, rather than being sold it by the Supplier as an investment. They did not recall anything the Supplier said that suggested they would, or could, make a profit from the membership.

I have also been presented with what the PR has termed a "supplementary statement" which is signed and dated by Mrs D on 16 January 2024. Here, Mrs D largely repeats what she said above, and repeats that she was told "we would get our money back" and "it sounded like a good investment". She also concludes:

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[2] The sales meeting took place on 13 August 2013, not September, and this is reflected on the Purchase Agreement. The Supplier also says that the holiday was not a "free week" but a normal booking they made using their points-based membership, so there was no obligation on Mrs D and Mr S to attend the meeting.

"We were told that by upgrading to Fractional, we would be securing an "investment". We therefore would not be at risk of losing money, and at the same time be able to have decent holidays."

But Mrs D and Mr S did not say that they were told the Fractional Club was an investment in the first witness statement, and I am minded to place much less weight on the second witness statement as it was only provided after the investigator had rejected the complaint. I also think that this allegation lacks the necessary context in which Mrs D now says she was told she was buying an investment.

That doesn't mean Mrs D and Mr S 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 D herself doesn't persuade me that their purchase was motivated by their share in the Allocated Property and the possibility of a profit, I don't think a breach of Regulation 14(3) by the Supplier was likely to have been material to the decision they ultimately made.

On balance, therefore, even if the Supplier had marketed or sold the Fractional Club membership as an investment in breach of Regulation 14(3) of the Timeshare Regulations, I am not persuaded that Mrs D and Mr S's decision to purchase Fractional Club membership at the Time of Sale was motivated by the prospect of a financial gain (i.e., a profit). On the contrary, I think the evidence suggests they would have pressed ahead with their purchase whether or not there had been a breach of Regulation 14(3). And for that reason, I do not think the credit relationship between Mrs D and the Lender was unfair to her 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 D was not given sufficient information at the Time of Sale by the Supplier about the ongoing costs of Fractional Club membership. The PR also says that the contractual terms governing the ongoing costs of membership and the consequences of not meeting those costs were unfair contract terms.

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

As for the PR's argument that there were one or more unfair contract terms in the Purchase Agreement, I can't see that any such terms were operated unfairly against Mrs D and Mr S in practice, nor that any such terms led them to behave in a certain way to their detriment. And with that being the case, 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.

In November 2024, the PR asserted on behalf of Mrs D that the payment of commission made the financial arrangement unfair. The PR didn't give a level of commission at which it considered unfairness arose, but its arguments included the following:

Despite requests, there had been no disclosure of the actual amount of commission paid by the Lender to the Supplier per the Court of Appeal's judgment in Johnson[3], the percentage of commission should be based upon "the sum borrowed"
the amount of the annual percentage rate of interest ("APR") is key and was unusually high, substantially increasing the total charge for credit
Commission paid by the Supplier to its self-employed sales representatives should also be disclosed and taken into account in the calculation used to determine unfairness

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

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[3] The PR's submission references the Court of Appeal judgment (*Johnson v FirstRand Bank Limited, Wrench v FirstRand Bank Limited and Hopcraft v Close Brothers* [2024] EWCA Civ 1106 *("Johnson"*)). The Supreme Court has since handed down its judgment clarifying the position in law.

complaint, Hopcraft, Johnson and Wrench is relevant law that I'm required to consider under Rule 3.6.4 of the Financial Conduct Authority's Dispute Resolution Rules ('DISP').

But I don't think Hopcraft, Johnson and Wrench assists Mrs D in arguing that her credit relationship with the Lender was unfair to her and Mr S for reasons relating to commission given the facts and circumstances of this complaint.

I haven't seen anything to suggest that the Lender and Supplier were tied to one another contractually or commercially in a way that wasn't properly disclosed to Mrs D and Mr S, 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 them 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 the case law on Section 140A makes it clear that regulatory breaches do not automatically create unfairness for the purposes of that provision. Such breaches and their consequences (if there are any) must be considered in the round, rather than in a narrow or technical way. And with that being the case, it isn't necessary to make a formal finding on that because, even if the Lender and the Supplier failed to follow the relevant regulatory guidance at the Time of Sale, it is for the reasons set out below that I don't currently think any such failure is itself a reason to find the credit relationship in question unfair to Mrs D.

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 D and Mr S entered into wasn't high. At £2,335.30, it was only about 10% of the amount borrowed and even less than that (5.5%) 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 D and Mr S 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 D and Mr S but as the supplier of contractual rights they obtained under the Purchase Agreement, the transaction doesn't strike me as one with features that suggest the Supplier had an obligation of 'loyalty' to them when arranging the Credit Agreement and thus a fiduciary duty.

I don't consider it necessary for me to take into account any commission the Supplier might have paid to its sales representatives, or that this should be disclosed or factored into any calculation used to determine unfairness. Even if any such arrangement was in place (and I make no finding in this respect), its disclosure and/or payment would be further removed from any obligations the Supplier might have held, and even less likely to have an impact on Mrs D and Mr S's decision to enter into the Credit Agreement. I'm aware of the factors the PR feels should be taken into account in calculating the loan APR and commission.

However, I'm satisfied it's appropriate that I follow the approach set out in the Supreme Court judgment.

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 D and Mr S.

Commission: The Alternative Grounds of Complaint

While I've found that Mrs D and Mr S'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 D'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 D and Mr S (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 D and Mr S 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 do not think that the Lender acted unfairly or unreasonably when it dealt with Mrs D's Section 75 claim. I am not persuaded that the Lender was party to a credit relationship with her and Mr S 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 Mrs D."

In summary, I wasn't minded to think that the Lender acted unfairly or unreasonably when it dealt with Mrs D's section 75 claim.

I didn't find any of the arguments put forward demonstrated that the credit agreement between Mrs D and Mr S and the Lender was unfair to them under section 140A of the CCA. Absent any other reason why it would be fair or reasonable to direct the Lender to compensate Mrs D, I said I didn't propose to uphold the complaint.

Responses to my provisional findings

The Lender accepted my PD. The PR didn't accept the proposed outcome. It made a further submission in support of Mrs D's position. Having received and reviewed these, I'm now proceeding with my final decision.

In doing so, I'm conscious that the PR has made a series of assertions surrounding the provision of information relating to commission arrangements. These include, among other things, expressing doubt that the Lender has provided key information, requesting that the information we have received be shared with it in full, and asking that we do not proceed with a decision before this is done and it has had an opportunity to make further submissions.

The PR's requests have been addressed by us under separate correspondence. For reasons I will explain in the course of this decision, I've concluded that it's appropriate for me to proceed with my determination.

The legal and regulatory context

The legal and regulatory context that I think is relevant to this complaint has been shared in several hundred published decisions on very similar complaints, as well as in previous correspondence with the parties. So there's no need for me to set this out again in detail here. I simply remind the parties that our rules[4] say that in considering what is fair and reasonable in all the circumstances of the complaint, I will 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.

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.

After considering the case afresh and having regard for what's been said in response to my PD, I find it offers no persuasive reason to depart from the conclusions I've previously set out. I'll explain why.

The PR originally raised various points of complaint, such as those giving rise to Mrs D's section 75 claim, which I addressed in my PD. In its response, it hasn't made any further comments in relation to most of its original points or said anything that leads me to think it disagrees with my provisional conclusions in relation to those points. So I'll focus here on the points the PR *has* made in response.

The PR's response to my PD relates mainly to the issue of the disclosure of documents to show the commission arrangements between the Lender to the Supplier, among other things, which it says led to an unfair credit relationship between the Lender and Mrs D.

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

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

The PR has asked for the documents the lender has provided to us to show the commission arrangements. While I appreciate the PR would like to have full disclosure of all of the documents and information the Lender has provided, our rules do not require me to provide this when dealing with a complaint.

[4] Financial Conduct Authority ("FCA") Handbook – DISP 3.6.4R ("R" denotes a rule).

As the PR has been informed, under DISP 3.5.9R I may, where I consider it appropriate, accept information in confidence (so that only an edited version, summary or description is disclosed to the other party). That is what I have done in my PD. I'm satisfied that agreements between the Lender and the Supplier are commercially sensitive and that the summary information on commission arrangements we've already shared with the PR is appropriate in this case.

I see no reason to find that this prejudices any arguments the PR or Mrs D is able to make in support of Mrs D's position. The PR has demonstrated its ability to present Mrs D's case and has had sufficient time to consider and make any further arguments.

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 remain unpersuaded that the credit relationship between Mrs D and the Lender under the Credit Agreement and related Purchase Agreement was unfair to her such that it warrants the Lender offering any redress.

Conclusion

After careful reconsideration of the facts and circumstances of this complaint, I adopt my provisional conclusions as part of my final decision. For the reasons I've given above and in my earlier correspondence I've mentioned, I don't think the Lender acted unfairly or unreasonably when it dealt with Mrs D's section 75 claim. And I'm not persuaded that the Lender was party to a credit relationship with her and Mr S that was unfair to them for the purposes of section 140A of the CCA. Having taken everything into account, I see no other reason why it would be fair or reasonable for me to direct the Lender to compensate Mrs D.

My final decision

For the reasons set out above, my final decision is that I don't uphold this complaint.

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

Andrew Anderson
Ombudsman