DRN-6154409

The complaint

Miss C's complaint is, in essence, that Mitsubishi HC Capital UK Plc trading as Novuna Personal Finance (the 'Lender') acted unfairly and unreasonably by (1) being party to an unfair credit relationship with her 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

Miss C owned a timeshare with a timeshare provider (the 'Supplier'). She was on holiday when she attended a presentation about a new product (the 'Fractional Club') on 5 November 2014 (the 'Time of Sale'). She entered into an agreement with the Supplier to buy 690 fractional points at a cost of £6,688 (the 'Purchase Agreement').

Fractional Club membership was asset backed – which meant it gave Miss 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 her membership term ends.

Miss C paid for her Fractional Club membership by taking finance of £6,688 from the Lender (the 'Credit Agreement').

Miss C – using a professional representative (the 'PR') – wrote to the Lender on 13 May 2021 (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 Miss C's concerns as a complaint and issued its final response letter on 4 November 2021, rejecting it on every ground.

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

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

I issued my provisional decision (the 'PD') to the parties on 30 October 2025. In my PD, I said:

"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.

What is more, I have made my decision on the balance of probabilities – which means I have based it on what I think is more likely than not to have happened given the available evidence and the wider circumstances.

I would also like to set out my thoughts on the information provided to me by the PR during the course of this complaint.

The PR has confirmed that it does not hold a "statement of truth" from Miss C, collected before it raised the complaint with the Lender. Our service has not received any testimony in Miss C's own words at any stage during the complaint.

Direct testimony from the consumer, in full and in their own words, is important in a case like this. It allows the decision-maker to assess credibility and consistency, to know precisely what was supposedly said, and to understand the context in which it was supposedly said. Here, that simply isn't possible. It's also important that the decision-maker can see that the Letter of Complaint genuinely reflects the consumer's testimony. Again, that simply isn't possible in this case.

After the investigator issued his findings, the PR says that Miss C's witness statement, and the Letter of Complaint, were both prepared based on Miss C's instructions. However, a letter of complaint (or claim) is not evidence – especially when, as here, it contains bare allegations or a mere summary of the consumer's allegations. And, as I will go on to explain, the Letter of Complaint in this case contains some information that does not align with what I have seen elsewhere in the accompanying paperwork. Further, the PR has not provided the witness statement it now says it has.

With all this considered, I'm unable to place much, if any, evidentiary weight on the Letter of Complaint or the PR's response to the Investigator's assessment. So, I have relied on the paperwork that's been provided, and the particular circumstances of the case.

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.

Miss C'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 Miss C's claims were time-barred under the Limitation Act 1980 (the 'LA') before she first raised them to 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.

Miss C'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 Miss C entered into the Purchase Agreement at that time based on alleged misrepresentations of the Supplier, which she says she 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 Miss C entered into this that she suffered a loss.

Miss C first notified the Lender of her claims against it on 13 May 2021, 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 Miss C made against it for the Supplier's alleged misrepresentations.

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

I have already summarised how Section 75 of the CCA works and why it gives consumers a right of recourse against a lender. So, it is not necessary to repeat that here other than to say that, if I find that the Supplier is liable for having breached the Purchase Agreement, the Lender is also liable.

Miss C says that she could not holiday where and when she wanted to. That was framed, in the Letter of Complaint, as part of her complaint about the fairness or otherwise of his credit relationship with the Lender under Section 140A of the CCA. However, on my reading of the complaint, this suggests that the Supplier was not living up to its end of the bargain, potentially breaching the Purchase Agreement.

Unlike a claim for misrepresentation, the point in which Miss C alleges she suffered a loss was not necessarily at the Time of Sale, instead, it was at the time she did not receive the holiday(s) she was promised under the Purchase Agreement. I don't think I need to make a finding on exactly when this first occurred, as I don't think the claim ought to have been paid by the Lender. I also note that Miss C traded her Fractional Club membership for another product on 6 July 2015. Like any holiday accommodation, availability was not unlimited – given the higher demand at peak times, like school holidays, for instance. Some of the sales paperwork likely to have been signed by Miss C states that the availability of holidays was/is subject to demand. I accept that she may not have been able to take certain holidays. But neither she nor the PR have provided me with enough details or evidence to support the allegation, so I'm not persuaded that the Supplier breached the terms of the Purchase Agreement.

So, from the evidence I have seen, I do not think the Lender is liable to pay Miss C any compensation for a breach of contract by the Supplier. And with that being the case, I do not think the Lender acted unfairly or unreasonably in relation to this aspect of the complaint either.

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

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

Having considered the entirety of the credit relationship between Miss 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 have looked at:

1. *The standard of the Supplier's commercial conduct – which includes its sales and marketing practices at the Time of Sale along with any relevant training material;*
2. *The provision of information by the Supplier at the Time of Sale, including the contractual documentation and disclaimers made by the Supplier;*
3. *Evidence provided by both parties on what was likely to have been said and/or done at the Time of Sale; and*
4. *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 Miss C and the Lender.

I have also thought about whether the alleged misrepresentations might have led to an unfair relationship between Miss C and the Lender.

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

Miss C'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 Miss C 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 Miss C to make the purchasing decision she 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:

1. *the right checks weren't carried out before the Lender lent to Miss C.*
2. *Miss C was pressured by the Supplier into purchasing Fractional Club membership at the Time of Sale.*
3. *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 Miss C was actually unaffordable before also concluding that she lost out as a result and then consider whether the credit relationship with the Lender was unfair to her for this reason. But from the information provided, I am not satisfied that the lending was unaffordable for Miss C.

I acknowledge that Miss C may have felt weary after a sales process that went on for a long time. But I have not been provided with any testimony from Miss C, or enough evidence, to allow me to understand what was said and/or done by the Supplier during Miss C's sales

presentation that made her feel as if she had no choice but to purchase Fractional Club membership when she simply did not want to. Miss C was also given a 14-day cooling off period and she has not provided a credible explanation for why she did not cancel her membership during that time. And with all of that being the case, there is insufficient evidence to demonstrate that Miss C made the decision to purchase Fractional Club membership because her ability to exercise that choice was significantly impaired by pressure from the Supplier.

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

1. *told by the Supplier that Fractional Club membership had a guaranteed end date when that was not true.*
2. *told by the Supplier that she was buying an interest in a specific piece of "real property" when that was not true.*
3. *told by the Supplier that Fractional Club membership was an "investment" when that was not true.*

However, I cannot see why the Supplier would have said something untrue at the Time of Sale even if it did say what Miss C and the PR allege under point (1). It seems to me to reflect the main thrust of the contract she entered into. And while, under Rules 9.1 and 9.2.9 of the relevant Fractional Club Rules, the sale of the Allocated Property could be postponed for up to two years by the 'Vendor'[1], longer than that if there were problems selling and the 'Owners'[2] agreed, or for an otherwise specified period provided there was unanimous agreement in writing from the Owners, that does not render the representation above untrue. So, I am not persuaded that the representation above constituted a false statement of fact even if it was made.

As for points (2) and (3), neither of these 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 – nor was it untrue to tell prospective members that they would receive some money when the allocated property is sold. After all, a share in an allocated property was clearly the purchase of a share of the net sale proceeds of a specific property in a specific resort. And while the PR might question the exact legal mechanism used to give prospective members that interest, it did not change the fact that they acquired such an interest.

Overall, therefore, I don't think that Miss C'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 that's the suggestion that Fractional Club membership was marketed and sold to her 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 Miss C's Fractional Club membership met the definition of a "timeshare contract" and was a "regulated contract" for the purposes of the Timeshare Regulations.

---

[1] Defined in the FPOC Rules as "CLC Resort Developments Limited".
[2] Defined in the FPOC Rules as "a purchaser who has entered into a Purchase Agreement and has been issued with a Fractional Rights Certificate (which shall include the Vendor for such period of time until the maximum number of Fractional Rights have been acquired)."

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 that the Supplier did exactly that at the Time of Sale – saying, in summary, that Miss C 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 Miss 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 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 Miss C 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 her as an investment, i.e. told her or led her to believe that Fractional Club membership offered her the prospect of a financial gain (i.e., a profit) given the facts and circumstances of this complaint.

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

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

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 Miss 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 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 Miss 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 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 Miss C and the Lender that was unfair to her and warranted relief as a result, whether the Supplier's breach of Regulation 14(3) led her to enter into the Purchase Agreement and the Credit Agreement is an important consideration.

But as I've explained, the PR has not provided me with any testimony or statement from Miss C for me to understand what she says she was told at the Time of Sale. What's more, the Letter of Complaint explains that the sale took place in Spain, when the paperwork shows that it took place in the United Kingdom. It follows that I find it unlikely that Miss C was shown the apartments the Letter of Complaint says she was shown at the Time of Sale. I also note that the PR refers to Miss C receiving guaranteed accommodation during "every other September". As Miss C did later purchase a product that fits that description, which was sold in Spain, I can reasonably conclude that its Letter of Complaint is written in relation to that purchase, and not the Fractional Club membership that was funded by the Lender.

I would not be surprised to hear that Miss C was at least somewhat interested in gaining 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 the PR has not persuaded me that Miss C's purchase was motivated by her 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 she 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 Miss 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 she would have pressed ahead with her 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 Miss C 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 Miss C were 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 Miss C sufficient information, in good time, on the various charges she could have been subject to as a Fractional Club member in order to satisfy the requirements of Regulation 12 of the Timeshare Regulations (which was concerned with the provision of 'key information'). But

even if that was the case, I cannot see that the ongoing costs of membership were applied unfairly in practice. And as neither Miss C nor the PR have persuaded me that she would not have pressed ahead with her 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 Miss C in practice, nor that any such terms led her 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 summary, I wasn't minded to think that the Lender acted unfairly or unreasonably when it dealt with Miss C's section 75 claims.

At the time of my PD I deferred my conclusions on the matter of commission disclosure in order to review that issue further. I've since written to the parties setting out my thoughts on why I wasn't persuaded to uphold this aspect of the complaint.

Applying the principles and factors set out in the Supreme Court judgment[3] handed down on 1 August 2025, I found nothing to suggest to suggest that the Lender and Supplier were tied to one another contractually or commercially in a way that wasn't properly disclosed to Miss C. Nor did I see anything that persuaded me that the commission arrangements between them gave the Supplier a choice over the interest rate which led Miss C into a credit agreement that cost disproportionately more than it otherwise could have.

Further, the flat rate and amount of commission paid was such that it gave me no reason to think that any failure to disclose it to Miss C had a material impact on her decision to enter into the Credit Agreement. At £652.08, it was only 9.75% of the amount borrowed and even less than that (5.34%) as a proportion of the charge for credit. That didn't strike me as disproportionate; nor were the surrounding circumstances otherwise capable of rendering unfair the credit relationship between the Lender and Miss C such that the Lender needed to take any action in redress.

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

Responses to my provisional findings

The Lender did not respond to my PD. The PR didn't accept the proposed outcome. It made further submissions in support of Miss C'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

[3] *Johnson v FirstRand Bank Ltd, Wrench v FirstRand Bank Ltd and Hopcraft v Close Brothers Ltd* [2025] UKSC 33 ("*Hopcraft, Johnson and Wrench"*)

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, and in my subsequent correspondence, 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 Miss C'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 whether the credit relationship between Miss C and the Lender was unfair *per* section 140A of the CCA. In particular, the PR has provided more comment in relation to whether the membership was sold to Miss C as an investment at the Time of Sale. It has also made further submissions in support of its position that the payment of a commission by the Lender to the Supplier led to an unfair credit relationship between the Lender and Miss C.

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 has questioned whether my provisional conclusions run contrary to precedent decisions issued by my ombudsman colleagues and the judgment handed down in *Shawbrook and BPF v FOS*. I don't believe they do. However, for the avoidance of doubt, other decisions issued by other ombudsmen do not have a precedent effect like some court judgments might, and each ombudsman must determine each case on its own specific

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

facts. Further, the judgment referred to did not make a blanket finding that all products of the type that Miss C purchased were mis-sold in the way the PR appears to be suggesting.

I remind the PR that in my PD I accepted the possibility that Fractional Club membership was marketed and/or sold to Miss C as an investment, in breach of Regulation 14(3). I went on to explain that relevant case law[5] indicates that in considering the question of relief for any resultant unfairness in the credit relationship, I needed to take into account any material impact of such a breach on Miss C's decision whether to enter into the Purchase and Credit Agreements. It doesn't strike me that doing so flies in the face of either the handed down judgment or previous decisions the PR has mentioned.

The PR has referred me to the Supplier's training materials, but I have already considered these. It also says that it disagrees with the view taken with regards to Miss C's testimony and that she makes *"clear that one of the factors in purchasing the fractional timeshare products was that it was an investment*". But I will remind the PR that it did not provide any testimony in Miss C's own words. Indeed, it reiterates this point in its own submission by suggesting that its own Letter of Complaint is evidence:

"We would submit there is clear evidence that the credit relationship was unfair and again point the Ombudsman back to the client's claim."

As I set out in the PD, "*a letter of complaint (or claim) is not evidence – especially when, as here, it contains bare allegations or a mere summary of the consumer's allegations."* I also reiterate that the Letter of Complaint incorrectly named the country in which Miss C entered into the contract in question, and it also got the type of holiday rights she gained wrong. It ought to come to no surprise to the PR that it follows that I'm unable to place much, if any, evidentiary weight on the Letter of Complaint, as I said in the PD. The PR ought to know the importance of direct testimony in a consumer's own words in cases like Miss C's. After all, it has requested that I obtain direct testimony from all persons present at the sale from the Supplier who were involved in the sale, though I do not think it is necessary for me to obtain such testimony to reach a fair and reasonable outcome to Miss C's complaint.

The PR also asks:

"What did this client achieve by purchasing the Fractional Product that the trial membership didn't give her, she already had access to holidays, but for the investment what was she buying?"

The PR is aware that Miss C did not become a member of the Fractional Club by trading her trial membership – in fact there was a gap of about six years between those respective purchases during which time Miss C became a member of the Supplier's Vacation Club, and she subsequently upgraded that membership to buy more points. In upgrading again, to the Fractional Club membership, she gained additional points, providing her with additional holiday rights. She later upgraded her membership again to gain additional holiday rights. Absent any direct testimony, as I said before, whether or not the Supplier marketed or sold Fractional Club membership as an investment in breach of Regulation 14(3), I'm not persuaded Miss C's decision to make the purchase was materially impacted by the prospect of a financial gain. It follows that I find the credit relationship between Miss C and the Lender was not rendered unfair to her for this reason.

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

[5] *Carney* and *Kerrigan*

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.

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 Miss C is able to make in support of Miss C's position. The PR has demonstrated its ability to present Miss C's case and has had sufficient time to consider and make any further arguments.

As I've noted, the PR has disagreed with my provisional conclusions on whether the Lender should pay redress because of an unfair credit relationship arising in connection with commission arrangements between the Lender and the Supplier. The PR says, in summary, that when the overall circumstances of those arrangements are considered in the round, the credit relationship was plainly unfair. In support of this position the PR has expressed, among other things, that:

- The PD doesn't properly apply the Supreme Court's judgment in *Hopcraft, Johnson and Wrench,* which concluded a range of factors informed whether a credit relationship between a consumer and a lender was unfair
- A conflict of interest existed on the part of the Supplier, who provided neither independent nor competent explanation of the credit
- Failure to disclose payment of commission – irrespective of the size of any payment - was a regulatory breach that goes to the heart of fairness

I have read and considered the submissions made by the PR on behalf of Miss C. But I don't find what it has said offers persuasive grounds for me to reach a different conclusion on this issue.

I've previously set out my thoughts on any impact the Supreme Court's conclusions in *Hopcraft, Johnson and Wrench* has on Miss C's arguments that her credit relationship with the Lender was unfair to her for reasons relating to commission given the facts and circumstances of this complaint.

The PR's response doesn't offer anything that leads me to think that, for the most part, any of the factors it has referenced were in fact at play in Miss C's case. It hasn't, for example, provided evidence to show the existence of commercial or contractual ties that were concealed from Miss C, any persuasive reasons to conclude that the Supplier's role was that of advisor to Miss C, or to show that any other conflict of interest arose from the roles the Supplier did perform.

For such a claim to be successful would require more than the bare assertions that have been made in this case. I'm not persuaded that it is sufficient, as the PR seems to contend, simply to suggest unsubstantiated allegations of fact and require that the Lender disprove them else the credit relationship be deemed unfair. This issue was considered in the judgment in *Promontoria (Henrico) Ltd v. Gurcharn Samra* [2019] EWHC 2327 (Ch) ("*Samra*"), where HHJ David Cooke held (at para.26):

"…the onus is on the claimant[6] to show, to the normal civil standard, that the relationship is not unfair because of any of the reasons set out in s 140A(1)(a)-(c). Whether it is so unfair is a matter for the court's overall judgment having regard to all the relevant circumstances and matters, including matters relating (i.e. personal) to the creditor and debtor. This onus on the claimant does not however mean, in my judgement…that where Mr Samra[7] makes allegations of fact on which he relies he does not have the burden of proving them to the normal civil standard. The onus placed on the creditor is as to the relationship between it and the debtor, and does not have the effect that factual allegations made by Mr Samra must be accepted unless they can be positively disproved by contrary evidence."[8]

I'm satisfied the Lender has provided sufficient information in response to my enquiries to enable me to reach a conclusion about its commission arrangements with the Supplier. I've seen nothing in this case that leads me to think what the Lender has said about the commission arrangements is inaccurate. So there's no reason for me to reach a different finding over those commission arrangements.

In its correspondence the PR has emphasised the regulatory breaches connected with a failure to disclose commission payment. I have already set out why in my view this doesn't automatically lead to an unfair credit relationship for which the Lender needs to offer redress. While I've considered all that the PR has submitted, I remain of that view.

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 Miss C and the Lender under the Credit Agreement and related Purchase Agreement was unfair to her such that it warrants the Lender offering any redress.

Commission: The Alternative Grounds of Complaint

In my previous correspondence I mentioned that some of the grounds for complaint about the fairness or otherwise of the credit relationship could also constitute separate and freestanding complaints. I'll reiterate my findings 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 Miss C (that is, secretly). 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.

For the reasons I set out previously, I'm not persuaded that the Supplier – when acting as credit broker – owed Miss 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 her. 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

[6] In this case the creditor answering a claim of an unfair credit relationship arising out of an overdraft facility.
[7] In this case the borrower making an allegation that there was an unfair credit relationship.
[8] I further note that in *Wilson v Clydesdale Financial Services Ltd t/a Barclays Partner Finance* [2021] (Unreported), the court also took the view that the burden is on the debtor to prove on the balance of probabilities *the facts* that purportedly create the unfairness. It is then that the lender's burden of proof that requires it to prove *the relationship* was not unfair kicks in. While I do not suggest this offers legal precedent, the subject matter of that case was a fractional timeshare sale, and given the similarities seems to me an appropriate approach when considering the facts in this case.

uphold this complaint. For the reasons I have also previously set out, I think she would still have taken out the loan to fund her purchase at the Time of Sale had there been more adequate disclosure of the commission arrangements that applied at that time.

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 Miss C's section 75 claims. And I'm not persuaded that the Lender was party to a credit relationship with Miss C that was unfair to her 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 Miss C.

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 Miss C to accept or reject my decision before 13 March 2026.

Andrew Anderson
Ombudsman