DRN-6156675

The complaint

Mrs D's complaint is, in essence, that Tandem Personal Loans Ltd (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

Mrs D, along with her husband, Mr D, purchased membership of a timeshare (the 'Fractional Club') from a timeshare provider (the 'Supplier') on 26 November 2018 (the 'Time of Sale'). They entered into an agreement with the Supplier to buy 1,420 fractional points at a cost of £23,999 (the 'Purchase Agreement').

Fractional Club membership was asset backed – which meant it gave Mrs D and Mr D 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 paid for the Fractional Club membership by taking finance of £5,999 from the Lender (the 'Credit Agreement'). The remaining balance was funded by trading in their existing points-based timeshare, which was given a value of £13,000, and a bank transfer of £5,000. As the Credit Agreement was taken out in Mrs D's sole name, she is the only eligible complainant. I will also refer to Mr D below where appropriate.

Mrs D – using a professional representative (the 'PR') – wrote to the Lender on 10 March 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 Mrs D's concerns as a complaint and issued its final response letter on 6 May 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.

Mrs D 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 5 September 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.

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

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

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 they were 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.*

The words and/or phrases allegedly used by the Supplier to misrepresent Fractional Club for the reason given in point (1) were set out by the PR in the Letter of Complaint, and they were: "…purchasing the Fractional would bring about an end of the liability in 2035…".

The PR says that such a representation was untrue because the "Sales Process" begins on the Sale Date as defined in the Fractional Club Rules, and under Rule 9, particularly Rules 9.2.9 and 9.2.12, there is no guarantee that any sale will result at all, leaving prospective members to pay their annual management charge for an indefinite and unspecified period.

However, I cannot see why the phrase above would have been untrue at the Time of Sale even if it was said. It seems to me to reflect the main thrust of the contract Mrs D 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) nor (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

[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)."

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.

So, while I recognise that Mrs D - and the PR - have concerns about the way in which Fractional Club membership was sold by the Supplier, when looking at the claim under Section 75 of the CCA, I can only consider whether there was a factual and material misrepresentation by the Supplier. For the reasons I've set out above, I'm not persuaded that there was. And that means that I don't think that the Lender acted unreasonably or unfairly when it dealt with this particular Section 75 claim.

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

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

Mrs D says that she and Mr D were told they would be members of an exclusive club. That was framed, in the Letter of Complaint, as part of their complaint about the fairness or otherwise of their 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.

Yet, Mrs D and Mr D were existing members of the Supplier's Vacation Club since 2009, so I think they would have known how the resorts operated. Additionally, in entering the Fractional Club, they did gain exclusive access to a particular apartment during the 19th week of each year.

So, from the evidence I have seen, I do not think the Lender is liable to pay Mrs D 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 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:

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 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 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 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. *Mrs D and Mr D were pressured by the Supplier into purchasing Fractional Club membership at the Time of Sale.*
2. *there was one or more unfair contract terms in the Purchase Agreement.*

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

I acknowledge that Mrs D may have felt weary after a sales process that went on for a long time. But she says little about what was said and/or done by the Supplier during the 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. She and Mr D 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 they had previously attended sales presentations about the Fractional Club and declined to make a purchase on those occasions. With all of that being the case, there is insufficient evidence to demonstrate that Mrs D made the decision to purchase Fractional Club membership because her 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 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 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 she was told by the Supplier that Fractional Club membership was an investment that would provide money upon the sale of the Allocated Property.

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 the prospect of a financial return – whether or not, like all investments, that was more than what she 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 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 and Mr D 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, such as Mrs D and Mr D, 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 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 Mrs D 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 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 the Lender that was unfair to her and warranted relief as a result, whether the Supplier's breach of Regulation 14(3) led her and Mr D to enter into the Purchase Agreement and Mrs D to enter 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 decided to go ahead with her purchase. This is because Mrs D, in her testimony, says she and Mr D were "keen to have an end date" to their liability to the Supplier, and that they expected to receive "money back" upon the sale of the Allocated Property. That doesn't mean they 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 themselves don't persuade me that their purchase was motivated by their share in the Allocated Property and the possibility of a profit, I don't think a breach of Regulation 14(3) by the Supplier was likely to have been material to the decision they ultimately made.

On balance, therefore, even if the Supplier had marketed or sold the Fractional Club membership as an investment in breach of Regulation 14(3) of the Timeshare Regulations, I am not persuaded that Mrs D'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 and Mr D 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).

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

This was because the Lender had supplied information demonstrating that no commission was paid in relation to the arrangements involving Mrs D. With that being the case, I wasn't persuaded this position could have led to an inequality of knowledge capable of rendering the credit relationship unfair to Mrs D 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 Mrs D 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 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 further submissions 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[3] 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 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 whether the credit relationship between Mrs D 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 Mrs D 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 Mrs D.

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

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

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 facts. Further, the judgment referred to did not make a blanket finding that all products of the type that Mrs D 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 Mrs D as an investment, in breach of Regulation 14(3). I went on to explain that relevant case law[4] 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 Mrs D'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.

While the PR has referred me to Mrs D's recollections and the Supplier's training materials, I have already considered these and what was said. And I set out in my PD the reasons why I didn't find that evidence sufficiently persuasive that Mrs D's purchase decision would have been any different, given the other motivational factors she had described.

I have re-examined Mrs D's witness statement, which is signed and dated on 16 April 2020. She recalls the events at the Time of Sale as follows:

"31. We were told about the Fractional Ownership and that most points members had switched to Fractional ownership as this provides and [sic] end date and part ownership of a property. Fractional weeks available were very limited, only 2 choices as most already sold. Bombarded with figures which involved surrendering Silver points membership and management fees paid to date and advised it would cost £10,999 to upgrade to 'Signature' Fractional Ownership in [Resort]. Encouraged to discuss by ourselves at [Supplier] office but advised it was time critical as others in the room were looking at the same option and decisions had to be made that day

32. The Fractional accommodation was superior to the accommodation that we could access with the Points Membership. The upgraded apartment we were staying in was 'conveniently' on the same 'gated' site as the only one on offer.

33. The Fractional contract would end in 2035 unlike the Points membership which would go on in perpetuity.

34. At the end of the contract the apartment would be sold and we would receive a fraction of the sales proceeds

35. [The Supplier] emphasised the benefits of reduced management fees with the Fractional Ownership and stated that annual increases would be less than that of points membership.

36. We were told that this would be an investment as we would have Fractional Ownership of the apartment which had an end date, upon which the Ownership would be sold with money back.

37. We were keen to have an end date to our liability to [the Supplier] and the payment of management fees. We were told that purchasing the Fractional would bring about an end of the liability in 2035 and that we would receive money back upon the sale.

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[4] *Carney* and *Kerrigan*

38. ***On the 26th November 2018 based on what we had been told and shown we agreed to purchase one week in the Fractionals at Signature Collection timeshare scheme with 1,420 Fractional Points in the allocated property [name] Signature Collection…" [emphasis as in the original the statement].***

Having re-examined Mrs D's statement, I remain of the view that Mrs D was persuaded to enter the Fractional Club because she wanted an end date to her membership and that she would receive *"money back".* But this is not the same as being told, or being motivated by, the prospect of making a *profit* from the eventual sale of the Allocated Property. Additionally, I think she was also clearly interested in the holidays she was promised in the Allocated Property as she wanted the particular week that she bought to use the Allocated Property, and that she felt under pressure to agree to the sale as others were interested in the same week. Elsewhere she says that this week was important to her as her wedding anniversary fell within it.

I have also read and considered the "supplementary witness statement" provided by the PR after the investigator rejected the complaint. Here, Mrs D recalls:

"19. We were told that this would be an investment, as well as a way to recover the money we had already spent with [the Supplier], as we would have part ownership in the apartment which had an end date, upon which the property would be sold, with money back.

20. We were told that Fractional Property Ownership was an investment, not only in luxury accommodation, for future holidays, and better choice, but also as a financial investment.

21. We can't honestly recall if we were shown actual figures, showing what our return would be at the end of the term. However, the salespeople said that we couldn't lose out on the purchase. The apartments were new build, and luxurious, so the return would only increase over time. As a result, we could even make money on top of what we paid."

I have thought about what Mrs D says here, though I feel I can place much less weight on this testimony as it was only after the Investigator issued their view, and after the judgment in *Shawbrook & BPF v FOS* was handed down, that she made these recollections. 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, there seems to me to be a very real risk that Mrs D's recollections were coloured by the judgment in *Shawbrook & BPF v FOS* and by the Investigator's outcome. And with that being the case, I'm not persuaded that I can give her written recollections the weight necessary to finding that the credit relationship in question was unfair for reasons relating to a breach of the relevant prohibition.

So 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 Mrs D'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 Mrs D and the Lender was not rendered unfair to her for this reason.

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 that no commission was paid. 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 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.

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 Mrs D. 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 Mrs D'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 Mrs D's case. It hasn't, for example, provided evidence to show the existence of commercial or contractual ties that were concealed from Mrs D, any persuasive reasons to conclude that the Supplier's role was that of advisor to Mrs D, 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[5] 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[6] 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."[7]

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 there being no commission paid 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 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 claims. And I'm not persuaded that the Lender was party to a credit relationship with Mrs D 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 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 16 March 2026.

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[5] In this case the creditor answering a claim of an unfair credit relationship arising out of an overdraft facility.
[6] In this case the borrower making an allegation that there was an unfair credit relationship.
[7] 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.

Andrew Anderson
Ombudsman