DRN-6163789

The complaint

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

As Mr L was accompanied by his wife throughout these matters, I'll refer mainly to them both in this decision.

What happened

The product at the centre of this complaint is Mr and Mrs L's membership of a timeshare which I will refer to as the Fractional Club membership. This was purchased on 22 October 2018. Mr L took out a loan for the cost of the Fractional Club membership which was £16,627 (which consolidated an earlier loan used to buy a 'trial' membership)[1]. This was payable over 180 months at around £192 per month meaning the total amount to be paid over the term after costs and interest was £34,575 (the APR[2] was 11.9%).

The Fractional Club membership was a type of product which meant it provided future holidaying rights at the Supplier's group of resorts, based on a points system. Mr and Mrs L bought 810 points. However, the Fractional Club membership was also asset backed, which meant it gave Mr and Mrs L more than just holidaying rights. It included a share in the net sale proceeds of an Allocated Property named on the Purchase Agreement after this membership term ended, which in this case was in 2033.

Mr and Mrs L – using a professional representative (the 'PR') – wrote to the Lender on 1 June 2023 (the 'Letter of Complaint') to raise a number of different concerns. The Lender rejected the complaint on every ground.

Mr L then referred the complaint to the Financial Ombudsman Service. I issued a provisional decision (PD) about this case on 5 February 2026 in which I set out my reasoning for not upholding the complaint. The PD should be read in conjunction with this final decision. However, the PD invited the parties to respond with any further information or evidence they wanted to submit. I've now had a response from Mr and Mrs L's PR which basically disagrees with my PD. I will be making some comments about this addition further down.

As I said before, 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. I have already set out in the PD the legal and regulatory context in which I'm making my decision about this case:

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

[1] The cost of the Fractional membership itself was only £12,996.
[2] APR, or Annual Percentage Rate, is the yearly cost of a loan or credit, expressed as a percentage. It includes the interest rate plus any other mandatory fees, giving a more complete picture of the total cost of borrowing than the interest rate alone.

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

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

The FCA's Principles

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

- Principle 6
- Principle 7
- Principle 8

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.

Having done this, I am not upholding this complaint. I am sorry to disappoint Mr and Mrs L.

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. This affords consumers ("debtors") a right of recourse against lenders which provided 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 the membership had been misrepresented by the Supplier at the Time of Sale because Mr and Mrs L were:

1. Told that they had purchased an investment that would appreciate in value when that was not true.
2. Made to believe that they would have access to a wide range of holidays all around the year when that wasn't true.
3. Given incorrect information about the ongoing maintenance fees.

However, point 1 does not strike me as misrepresentation even if such a representation 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. Even if the Supplier's sales representatives went further and suggested that the share in question would increase in value, perhaps considerably so, that sounds like nothing more than an honestly held opinion as there isn't enough evidence to persuade me that the relevant sales representative(s) said something that, while an opinion, amounted to a statement of fact that they did not hold or could not have reasonably have held.

It's also not entirely clear whether these allegations, as put by their PR, are claiming that they thought they would be able to stay at an Allocated Property whenever they wanted, or they thought the availability of general accommodation using the holiday points more broadly, was guaranteed. I think in any event it's reasonable for me to say that like any holiday accommodation, availability was not unlimited given the higher demand at peak times, like school holidays, for instance.

In any event points 2 *and* 3 as put by the PR, are given none of the colour or context necessary to demonstrating that the Supplier made false statements of existing fact. So, since there are no other specific examples or supporting evidence on file to back up the suggestion that the membership was misrepresented in these ways, I don't think it was.

With all this in mind, whilst I recognise that Mr and Mrs L and the PR have concerns about the way in which this 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. So, this means that I don't think that the Lender acted unreasonably or unfairly when it dealt with this particular Section 75 claim.

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

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

Having considered the entirety of the credit relationship between Mr and Mrs L and the Lender along with all of the circumstances of the complaint, I don't think the credit relationship between them was likely to have been rendered unfair for the purposes of Section 140A. When coming to that conclusion, and in carrying out my analysis, I have looked at:

1. The standard of the Supplier's commercial conduct – which includes its sales and marketing practices at the Time of Sale along with any relevant training material;
2. The provision of information by the Supplier at the Time of Sale, including the contractual documentation and disclaimers made by the Supplier;
3. The commission arrangements between the Lender and the Supplier at the Time of Sale and the disclosure of those arrangements;
4. Evidence provided by both parties on what was likely to have been said and/or done at the Time of Sale;
5. The inherent probabilities of the sale given its circumstances; and when relevant, any existing unfairness from a related credit agreement.

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

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

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

The PR says, for instance, that the right checks weren't carried out before the Lender lent to Mr and Mrs L. I haven't seen anything to persuade me this was the case in this complaint given its circumstances. But even if I were to find that the Lender failed to do everything it

should have when it agreed to lend (and I make no such finding), I would have to be satisfied that the money lent to Mr and Mrs L 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 for this reason. Mr and Mrs L have not expanded on why or how the lending was unaffordable and from the information provided, I am not satisfied that the lending was unaffordable for them.

Connected to this is the suggestion by the PR that the Credit Agreement was arranged by an unauthorised credit broker, the upshot of which is to suggest that the Lender wasn't permitted to enforce the Credit Agreement. However, it looks to me like Mr and Mrs L knew, amongst other things, how much they were borrowing and repaying each month, who they were borrowing from and that they were borrowing money to pay for Fractional Club membership. As that lending doesn't look like it was unaffordable, even if the Credit Agreement was arranged by a broker that didn't have the necessary permission to do so, I can't see why that led to them suffering a financial loss – such that I can say that the credit relationship in question was unfair as a result.

I note that Mr and Mrs L say that oppressive and rushed sales techniques were a feature of their membership purchase in 2018, and I have considered carefully what they say about this. But while I acknowledge that they may have felt weary after sales processes that went on for a long time, for example, I can't see why this would have caused Mr and Mrs L to think they had *no choice* but to go ahead and buy a timeshare product which they didn't want. I've also noted that they both signed a 'right of withdrawal' form which advised them of their right to cancel the transaction within a 14-day period, and they haven't given any explanation as to why they didn't do this.

Overall, therefore, I don't think that Mr and Mrs L's credit relationship with the Lender was rendered unfair under Section 140A for any of the reasons above. But there is another reason, perhaps the main reason, why the PR says the credit relationship with the Lender was unfair. And that's the suggestion that Fractional Club membership was marketed and sold as an investment in breach of the prohibition against selling timeshares in that way.

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

The Lender does not dispute, and I am satisfied, that Mr and Mrs L'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."

The PR says that the Supplier did exactly this at the Time of Sale – saying, in summary, that Mr and Mrs L 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 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 because it offered Mr and Mrs L 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 membership was marketed or sold to Mr and Mrs L 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 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.

I am familiar with the documentation and processes used by the Supplier during these types of sale. 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 Mr and Mrs L, the financial value of the share in the net sales proceeds of the Allocated Property along with the investment considerations, risks and rewards attached to them.

However, 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 Mr and Mrs L 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. 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 said 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 could have had on the fairness of the credit relationship between Mr and Mrs L 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 Mr and Mrs L and the Lender that was unfair and warranted relief as a result, then 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.

I've thought very carefully about what motivated Mr and Mrs L to purchase the Fractional Club membership, considering all of the available evidence. Having done so, I do not think the prospect of a financial gain from this membership was an important and motivating factor

when they decided to go ahead with this purchase. And because of this, I think Mr and Mrs L would still have gone on to make the purchase, even if the Supplier might have breached the above Regulations. I say this for the following reasons.

In so far as any allegation of investment related marketing carried out by the Supplier during the sale is concerned, the PR said, *"they were told they had purchased an investment which would appreciate in value."* However, there was no further descriptive detail or evidence underpinning these allegations within the Letter of Complaint. I've noted that we've been sent a 'client personal statement' which appears to have been added to the complaint later. I can't see that this statement was dated and it doesn't appear to have been signed by either of them. Nevertheless, I have taken it as Mr and Mrs L's opportunity to provide their direct recollections, in their own words as it were.

Having considered all the circumstances, and what Mr and Mr L themselves have to say in their statement, I note they were first attracted to the Supplier's timeshare offerings by a radio advert promising affordable family holidays. They contacted the Supplier and then attended a sales presentation they had been invited to, in January 2018. At this, Mr and Mrs L first signed up to a 'trial' membership, and they borrowed money (from a different Lender) to pay for this.

When Mr and Mrs L then purchased the Fractional membership in October 2018, they did so after participating in the trial and having been offered another free / discounted holiday. Whilst abroad they attended another sales event which I think they would have known was directed at selling them a new / upgraded membership. And from what they've said, I think Mr and Mrs L were – not unreasonably – persuaded to upgrade their membership by the prospect of future, flexible holidays that would suit their family set-up over a reasonably long period.

I have noted that a significant amount of their statement refers to their recollections of heavy-handed sales pressure – an issue I've already dealt with above. However, I note they also say their new membership purchase in October 2018, *"would benefit us in the long term as at the end of the contract, we would have something of value to sell back as it would have gained in value, and we could sell it and make some profit".*

I've thought about this very carefully. However, whilst the word *"profit"* is certainly mentioned, I have to recognise that this subject area is referred to only briefly and within a much longer statement which highlights many other aspects of the purchase.

I also think that if Mr and Mrs L really did find this particular factor as being what they ultimately based their purchasing decision on, then they would have set out how they perceived the alleged investment opportunities - and the financial details they considered - much more comprehensively when bringing their points of complaint. Also, part of that relatively short paragraph (above) does, in my view, only describe how the Fractional membership actually *worked*, rather than it demonstrating a specific credible investment element which they were knowingly entering into for profit or gain. Put another way, their statement mainly describes how, upon reaching the end of the contract, they would have a small portion of the Allocated Property left to sell. That is merely a factual description of what they'd bought.

On the other hand, there was no description from them of any values, and no details of what was discussed or considered with regards to this evidently being an 'investment' which they felt drawn towards. I find this surprising. After all, the total costs with fees and interest were substantial amounts and I've seen nothing which shows Mr and Mrs L carried out even a basic financial evaluation of what any such 'investment' might mean or bring them. So, it seems to me their comments must be seen as limited and as no more than relatively vague

aspirations about future property values. I don't think this alleged investment aspect was their focus at the time.

I don't doubt that Mr and Mrs L may well look back at that period now with some regret. But taking everything into account, I don't believe that any breach by the Supplier of Regulation 14(3) – even if there was one - had an impact on their decision to go ahead with this membership purchase. I think the circumstances overall portray that Mr and Mrs L's expectations and motivations at that time were of buying a holiday product for their future enjoyment. In my view, the circumstances as a whole don't coherently or persuasively describe Mr and Mrs L buying this membership with an expectation of it being an investment which would yield a gain or profit, which for them wasn't realisable until 2033.

Of course, this doesn't mean they were not interested in a share in the Allocated Property. After all, that wouldn't be surprising given the nature of the product at the centre of this complaint. But I think it's unlikely they were motivated by what appears to be an unspecified investment hope. I don't think the evidence supports this. I think it's much more persuasive that they purchased this membership for the holiday enjoyment they thought it would bring.

Finally, I've been provided with contemporaneous contact notes from the Supplier in relation to Mr and Mrs L's ongoing membership(s) and discussions they had with the Supplier's employees at various points in time. I do understand the need to exercise some caution when interpreting these notes. However, I think that in a general sense, what was recorded at the times before the Fractional Club sale, during it, and indeed later on, all speak to Mr and Mrs L's desire for and focus on good quality holidays. This wasn't either surprising or unreasonable in the circumstances, and I think this complements what I've said above about their motivations in purchasing this membership.

With all this in mind, I therefore think it's much more likely that Mr and Mrs L would have still pressed ahead with the purchase *whether or not* there had been a breach of Regulation 14(3). On this basis, I don't think the credit relationship with Tandem Bank Limited was unfair.

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

Mr and Mrs L say they were not given sufficient information at the Time of Sale by the Supplier about some of 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.

In any event, 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 do acknowledge that it is also possible that the Supplier did not give Mr and Mrs L 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.

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 Mr and Mrs L in practice, nor that any such terms led them to behave in a certain way to their detriment. So,

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.

Commission

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 credit charge). In Mr Johnson's case it was 55%. This was *"so high"* and *"a powerful indication that the relationship…was unfair"* (see paragraph 327);
2. The failure to disclose the commission; and
3. The concealment of the commercial tie between the car dealer and the lender.

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

1. The size of the commission as a proportion of the charge for credit;
2. The way in which commission is calculated (a discretionary commission arrangement, for example, may lead to higher interest rates);
3. The characteristics of the consumer;
4. The extent of any disclosure and the manner of that disclosure (which, insofar as Section 56 of the CCA is engaged, includes any disclosure by a supplier when acting as a broker); and
5. Compliance with the regulatory rules.

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

But I don't think Hopcraft, Johnson and Wrench assists Mr and Mrs L in arguing that a credit relationship with the Lender was unfair to them 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 Mr and Mrs L, 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 Mr and Mrs L into a credit agreement that cost disproportionately more than it otherwise could have.

I recognise that it's possible the Lender and the Supplier failed to follow the regulatory guidance in place at the Time of Sale insofar as it was relevant to disclosing the commission arrangements between them. But as I noted in my PD, case law on section 140A makes clear that regulatory breaches do not automatically lead to an unfair credit relationship, and that such breaches and any consequences must be considered in the round rather than in a narrow or technical way.

With that being the case, even if the Lender and the Supplier failed to follow the relevant regulatory guidance at the Time of Sale, I'm not minded that any such failure is itself a reason to find the credit relationship in question unfair to Mr and Mrs L. I say this for the following reasons.

In stark contrast to the facts in Mr Johnson's case, the amount of commission paid by the Lender to the Supplier for arranging Mr and Mrs L's Credit Agreement wasn't high. It was only 2.5% of the amount borrowed (or £416); and 2.3% as a proportion of the charge for credit – which is the calculation the Supreme Court used.

Had Mr and Mrs L known at the Time of Sale that the Supplier was going to be paid a flat rate of commission at this level, I'm not persuaded that they either wouldn't have understood that or would have otherwise questioned the size of the payment at that time. After all, Mr and Mrs L wanted the 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. As it wasn't acting as an agent of Mr and Mrs L 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 be even less likely to have an impact on Mr and Mrs L's decision to enter into the Credit Agreement.

Overall, therefore, I'm not 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 Mr and Mrs L.

Commission: The Alternative Grounds of Complaint

While I've found that Mr and Mrs L's credit relationship with the Lender wasn't unfair for reasons relating to the commission arrangements, two of the grounds on which I came to that conclusion also constitute separate and freestanding complaints to Mr and Mrs L's complaint about an unfair credit relationship. So, for completeness, I've considered those grounds on that basis here.

The first ground relates to whether the Lender is liable for the dishonest assistance of a breach of fiduciary duty by the Supplier because it took a payment of commission from the Lender without telling Mr and Mrs L (i.e., secretly). And the second relates to the Lender's compliance with the regulatory guidance in place at the Time of Sale insofar as it was relevant to disclosing the commission arrangements between them.

However, for the reasons I set out above, I'm not persuaded that the Supplier – when acting as credit broker – owed Mr and Mrs L 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. 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 the purchase at the Time of Sale had there been more adequate disclosure of the commission arrangements that applied at that time.

Responses to my PD

I received a response to my PD from Mr and Mrs L's PR. The PR has highlighted under Section 140B (9) of the CCA, the burden of proof falls on the Lender to disprove the allegation that its relationship with Mr and Mrs L was unfair. I agree that this is correct, placing a burden on lenders during the process of litigation. That does not mean, though, that the Lender – or I – should take a claim at face value. There still remains an onus on Mr and Mrs L to provide some evidence for the claim, despite the overall burden of proof resting with the Lender, as was set out in the judgment in *Smith and another v Royal Bank of Scotland plc* [2023] UKSC 34 at paragraph 40. I also remind both parties that it is my role to make findings on what I consider to be fair and reasonable in all the circumstances of any given complaint.

I'm also satisfied that, where appropriate, I have applied the law and the various rules correctly. I previously told both parties in my PD about the overall legal and regulatory context that I think is relevant to this complaint. The PR now objects to the approach I've taken, believing that I have detracted from the judgment in *Shawbrook & BPF v FOS*[3] and the case law that contributed to it, by requiring Mr and Mrs L to have been primarily or mainly motivated by the investment element in order to uphold the complaint. But I did not make such a finding. I basically said that, in my view, Mr and Mrs L were motivated by the holiday options offered by the Supplier – and this was a factor in my overall conclusion. In light of all the available evidence I said that they would, on balance, have pressed ahead with the purchase of the membership even if there had been a breach of Regulation 14(3).

I will also address the PR's point regarding the apparent ambiguity in the proposed sale date of the Allocated Property. The PR suggests that a delayed sale date could lead to an unfairness to Mr and Mrs L in the future, as any delay could mean a delay in the realisation of their share in the Allocated Property.

[3] *R (on the application of Shawbrook Bank Ltd) v Financial Ombudsman Service Ltd and R (on the application of Clydesdale Financial Services Ltd (t/a Barclays Partner Finance)) v Financial Ombudsman Service* [2023] EWHC 1069 (Admin) ('Shawbrook & BPF v FOS').

It does appear that the proposed date for the commencement of the sales process, as set out on the owners' certificate, is 2033. This same date is set out under point 1 of the Members Declaration, which has been initialled and signed as being read by Mr and Mrs L. This date indicates that the membership has a term of 15 years. The ambiguity identified by the PR is that in the Information Statement provided as part of the purchase documentation it says the following:

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

However, it seems clear to me that the contractual commencement date for the start of the sales process is 2033 – as above. This actual date is repeated in the (signed for) sales documentation as I've set out above. The Information Statement is, in my view, reflective of the fact that most fractional memberships were set up to run for nineteen years. But not all memberships attached to a given Allocated Property were sold at exactly the same time, so often the time left before the sale date was less than 19 years at the actual time of sale.

I accept that this could be confusing, however I do not think Mr and Mrs L were misled by this at the Time of Sale, as explained above. So, I can't see that this is a reason to find the credit relationship unfair and uphold this complaint.

Conclusion

I am very sorry to have to disappoint Mr and Mrs L. But as I have comprehensively explained, I do not think that the Lender acted unfairly or unreasonably when it dealt with the relevant Section 75 claim.

Also, I am not persuaded that the Lender was party to a credit relationship with Mr L under the Credit Agreement that was unfair for the purposes of Section 140A of the CCA – nor do I see any other reason why it would be fair or reasonable to direct the Lender to compensate him and Mrs L.

My final decision

I do not uphold this complaint against Tandem Bank Limited.

I do not direct Tandem Bank Limited to do anything more.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 18 March 2026.

Michael Campbell
Ombudsman