DRN-6167767

The complaint

Mr M's complaint is, in essence, that Mitsubishi HC Capital UK Plc (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.

What happened

I issued a provisional decision on Mr M's complaint on 29 January 2026, in which I set out the background to this complaint and my provisional conclusions. A copy of that provisional decision is appended to and forms part of this final decision, so it's not necessary for me to go over all the details again. To summarise the background briefly:

- Mr M bought a timeshare from a timeshare provider (the "Supplier") on 13 September 2012 (the "Time of Sale"), for £26,451. There was a balance to pay of £4,651 after the trade in of a previous timeshare Mr M had with the Supplier. The balance was financed by a loan of the same amount with the Lender, arranged by the Supplier.

- Mr M was represented by two different professional representatives over the course of the complaint – "PR1" and "PR2". PR1 submitted a complaint to the Lender in October 2017 about misrepresentations by the Supplier leading to the Lender being liable to Mr M under Section 75 of the CCA, and the Lender being party to an unfair credit relationship with Mr M for a variety of reasons. The Lender rejected the complaint.

- PR2 notified us in December 2023 that it had taken over Mr M's case. It made its own submissions and provided a new witness statement from Mr M. PR2's submissions were focused on something PR1 hadn't mentioned – that the Supplier had marketed the timeshare to Mr M as an investment in breach of the regulations on selling timeshares. This, PR2 argued, was another matter rendering the credit relationship unfair.

In my provisional decision, I said I didn't think the complaint ought to be upheld. While the full reasons for this are explained in the appended document, I've again summarised the key points:

- The misrepresentations Mr M alleged the Supplier had made were either:
    - True statements
    - Statements of opinion that Mr M had not been able to show the Supplier's representatives did not honestly or reasonably hold.
    - Difficult to conclude were made due to a lack of specific detail of what was said and in what context, and a lack of persuasive evidence.
- I did not think the credit relationship between Mr M and the Lender had been

rendered unfair to Mr M for the reasons PR1 had alleged, because:

- While Mr M had complained the Supplier had pressured him into making his purchase, I didn't think any pressure from the Supplier had significantly impaired his ability to make a choice. In particular, he had been given a 14-day cooling off period which he had not taken advantage of, and he went on to make another purchase from the Supplier, which I found difficult to understand if he'd been pressured into this purchase.

- The interest rate of the Credit Agreement was not "excessive", being broadly in line with the rates on offer from lenders for unsecured loans of the same amount and term at the time.

- While a commission had been paid by the Lender to the Supplier for arranging the Credit Agreement, it was small at £476.73, or 10.25% of the amount borrowed. I thought that disclosure of this amount would have been unlikely to affect Mr M's decision to proceed with the purchase. And I couldn't see anything else about the commission arrangements between the Lender and Supplier which might have led to unfairness. For example, I couldn't see that the arrangements gave the Supplier a choice over the interest rate that led to Mr M getting a Credit Agreement that cost him disproportionately more than it otherwise could have.

- I also did not think the credit relationship between Mr M and the Lender had been rendered unfair to him for the reason PR2 had focused on – the alleged improper marketing and sale of the timeshare to Mr M as an investment, essentially for reasons relating to Mr M's testimony:

  - While Mr M had ticked a box on a questionnaire he completed for PR1, indicating that the Supplier had told him the timeshare was an investment, he had not mentioned this when he had provided his own written comments as to what had happened at the Time of Sale. He had said only:

    "When we bought Product 1 we were given a voucher for another "free week" and were invited to another presentation. They played with figures and advised that we could buy more points – foolishly we did."

  - Mr M had not given any indication in the testimony he had given to PR1, that he had purchased the timeshare because he thought it was an investment.

  - While in the December 2023 witness statement Mr M had seemed to recall very clearly that the Supplier had sold him the timeshare as an investment, I felt unable to attach any weight to this second statement, observing:

    "It was only after our Investigator's assessment and the handing down of the judgment in Shawbrook & BPF v FOS that we were sent evidence that Mr M recalled that the Supplier led him to believe that Fractional Club membership offered him the prospect of a financial gain. 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. In light of this, I find it difficult to understand how and why the Financial Ombudsman Service was only given such evidence when it was, some 13 years after the Time of Sale, and how Mr M's recollections that long after the Time of Sale, were clearer and more detailed than his recollections from five years after the Time of Sale.

> The difficulties I have with Mr M's more recent testimony mean I am unable to attach much, if any, weight to it, except where it is corroborated by other evidence."

So I was not persuaded that – if indeed the Supplier had marketed the timeshare improperly as an investment (and I did not find that it had) – then this had been a significant factor in Mr M's purchasing decision.

I invited the parties to the complaint to let me have any further submissions they wanted me to consider, before I finalised my decision.

Neither party to the complaint has provided further submissions, and the case has now been returned to me to review once more.

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 so, and considering the fact that neither party to the complaint has given me any further submissions, I see no reason to depart from the conclusions I reached in my appended provisional decision, as explained in that document and summarised above.

It follows that I don't think the Lender acted unfairly by deciding against paying Mr M's Section 75 claim, and I don't think it participated in a credit relationship with Mr M that was unfair to him.

My final decision

For the reasons explained above, and in the appended provisional decision, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 19 March 2026.

Will Culley
Ombudsman

COPY OF PROVISIONAL DECISION

I've considered the relevant information about this complaint.

Having done so, I've arrived at the same general conclusions as our Investigator, but I've explained my reasons in more detail, so I'm giving the parties to the complaint a further opportunity to comment before I make my decision final.

The deadline for both parties to provide any further comments or evidence for me to consider is 12 February 2026. Unless the information changes my mind, my final decision is likely to be along the following lines.

If I don't hear from Mr M, or if they tell me they accept my provisional decision, I may arrange for the complaint to be closed as resolved without a final decision.

The complaint

Mr M's complaint is, in essence, that Mitsubishi HC Capital UK Plc (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.

The history of this complaint has been protracted. Mr M was originally represented by a company I will call "PR1", from 2017. In December 2023 we were made aware that another company, "PR2", had taken over from PR1. PR2 is Mr M's current representative.

What happened

This complaint concerns the purchase of a membership of a timeshare (the "Fractional Club") by Mr M from a timeshare provider (the "Supplier") on 13 September 2012 (the "Time of Sale").

Mr M had previously made two purchases from the Supplier which are not the subject of this specific complaint. He also went on to make a further purchase after this one, which again is not the subject of this complaint. I've included some basic details of the other purchases for the purpose of putting things in their proper context.

The first purchase was of a "Trial" membership from the Supplier in June 2011. Mr M then traded this in for a Fractional Club membership in March 2012, purchasing 1,050 points in the club, which could be exchanged for holiday accommodation annually. Mr M then made the purchase which is the subject of this complaint, which added 296 points to Mr M's Fractional Club membership. The final purchase took place in March 2013, and added a further 148 points to the membership.

The 13 September 2012 purchase (the "Purchase Agreement") was at a stated price of £26,451, but this was reduced to £4,651 after the trade-in of Mr M's existing holdings as part of the deal. That amount was financed by a loan of the same amount from the Lender, arranged by the Supplier, to be repaid over 180 months at £73.03 per month.

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

PR1, on behalf of Mr M, wrote to the Lender in October 2017 to make a complaint. While PR1's submissions were not straightforward to follow, I think it would be fair to summarise its heads of complaint on behalf of Mr M as follows:

1. Misrepresentations by the Supplier at the Time of Sale giving him a claim against the Lender under Section 75 of the CCA, which the Lender failed to accept and pay.
2. The Lender being party to an unfair credit relationship under the Credit Agreement and related Purchase Agreement for the purposes of Section 140A of the CCA.

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

Mr M[1] made a witness statement in 2017 which purported to allege that the Supplier made a number of pre-contractual misrepresentations at the Time of Sale. No alleged misrepresentations actually appeared within this statement. However, in an attached questionnaire Mr M had ticked next to boxes which indicated the following statements had been made to him by the Supplier:

1. told him that he was obtaining ownership of something which could easily be re-sold when that was not true.
2. told him that Fractional Club membership was an "investment" when that was not true.
3. told him that the purchase was a one-time opportunity and only available that day, when that wasn't true.
4. told him that that holidays would always be available where he wanted, and that he'd have enough points to book them, when that turned out not to be true.

Mr M says that he has a claim against the Supplier in respect of one or more of the misrepresentations set out above, and therefore, under Section 75 of the CCA, he has a like claim against the Lender, who, with the Supplier, is jointly and severally liable to him.

(2) Section 140A of the CCA: the Lender's participation in an unfair credit relationship

The original complaint from PR1, along with the first witness statement and associated questionnaire, set out several matters which I've interpreted as reasons why Mr M thinks that the credit relationship between him and the Lender was unfair to him under Section 140A of the CCA. In summary, they included the following:

1. He was pressured into purchasing Fractional Club membership by the Supplier and not told about his cooling off period.
2. A secret commission was paid as part of the purchase which was not disclosed to him.
3. The Lender charged an excessive rate of interest on the Credit Agreement.

The Lender dealt with Mr M's concerns as a complaint, which it rejected.

Mr M then referred the complaint to the Financial Ombudsman Service. After a considerable delay, it was assessed by an Investigator who, having considered the information on file, rejected the complaint on its merits.

It was at this point, in December 2023, that we were made aware of the involvement of PR2. We received submissions from PR2, as well as a new witness statement from Mr M.

[1] I'd led to understand from later submissions made in this case that the original witness statement was primarily the work of Mr M's late wife, who passed away in 2020. I have continued to refer to the witness statement as Mr M's statement, but I acknowledge it will have had input from Mrs M also.

PR2's submissions were focused on a point which had not been made previously by PR1 or Mr M, which was that Fractional Club membership was marketed and sold to Mr M as an investment in breach of regulation 14(3) of the Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010 (the "Timeshare Regulations"). PR2 argued this was another reason why the Credit Agreement had been rendered unfair to Mr M.

The case has been passed to me to decide.

The legal and regulatory context

In considering what is fair and reasonable in all the circumstances of the complaint, I am required under DISP 3.6.4R to take into account: relevant (i) law and regulations; (ii) regulators' rules, guidance and standards; and (iii) codes of practice; and (where appropriate), what I consider to have been good industry practice at the relevant time.

The legal and regulatory context that I think is relevant to this complaint is, in many ways. no different to that shared in several hundred published ombudsman decisions on very similar complaints – which can be found on the Financial Ombudsman Service's website. And with that being the case, it is not necessary to set out that context in detail here. But I would add that the following regulatory rules/guidance are also relevant:

The Office of Fair Trading's Irresponsible Lending Guidance – 31 March 2010

The primary purpose of this guidance was to provide greater clarity for businesses and consumer representatives as to the business practices that the Office of Fair Trading (the 'OFT') thought might have constituted irresponsible lending for the purposes of Section 25(2B) of the CCA. Below are the most relevant paragraphs as they were at the relevant time:

- Paragraph 2.2
- Paragraph 2.3
- Paragraph 5.5

The OFT's Guidance for Credit Brokers and Intermediaries - 24 November 2011

The primary purpose of this guidance was to provide clarity for credit brokers and credit intermediaries as to the standards expected of them by the OFT when they dealt with actual or prospective borrowers. Below are the most relevant paragraphs as they were at the relevant time:

- Paragraph 2.2
- Paragraph 3.7
- Paragraph 4.8

What I've provisionally 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.

And having done that, I do not currently think this complaint should be upheld.

But 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

As both sides may already know, a claim against the Lender under Section 75 essentially mirrors the claim Mr M could make against the Supplier. Certain conditions must be met if this protection is engaged – which are set out in the CCA. The Lender does not dispute that the relevant conditions are met in this complaint and I'm satisfied that they are.

This part of the complaint was made for several reasons that I set out at the start of this decision. They include the suggestion that Fractional Club membership had been misrepresented by the Supplier because Mr M was told that he would have ownership of something when that was not true. However, telling prospective members that they were buying a fraction or share of one of the Supplier's properties was not untrue. Mr M's share in the Allocated Property was clearly the purchase of a share of the net sale proceeds of a specific property in a specific resort. The exact mechanism by which an interest was acquired may have been an uncommon one, but it does not change the fact that it was such an interest.

Mr M also says he was told it would be easy to resell his Fractional Club membership. It would not have been false for the Supplier to state that Mr M could sell the product, as according to the contemporaneous paperwork this was possible. These documents also state quite prominently that the Supplier did not operate any resale programme itself and would not buy back products except when traded in against another purchase. I appreciate Mr M has said he was told it would be *easy*, when presumably he considered that it is not, but this appears to be a statement of opinion rather than fact. In the absence of evidence to show that the Supplier's representatives did not honestly hold such an opinion (assuming it was expressed), it's difficult to conclude that this was a misrepresentation.

As for the rest of the Supplier's alleged pre-contractual misrepresentations, while I recognise that Mr M has concerns about the way in which his Fractional Club membership was sold, he has not persuaded me that there was an actionable misrepresentation by the Supplier at the Time of Sale for the other reasons he alleges. And I say that because:

- If the Supplier had told Mr M that the membership was an investment then this wouldn't have been *untrue*, because there was in fact an investment element to the product. Marketing or selling the product as an investment was prohibited however, and I go into more detail on this issue later in the decision.

- It's difficult to conclude the Supplier misrepresented the availability of holidays which could be taken under the membership. It's been said the Supplier claimed holidays would always be available where Mr M wanted, and that he'd have enough points to book them. I note the documents Mr M signed, stated that holidays would be subject to availability, bookings were on a "first-come, first-served" basis, and that accommodation during school holidays in particular would need to be booked as far in advance as possible. Overall, I've been unable to identify a specific false statement of fact by the Supplier in relation to the availability of holidays. And if the Supplier told Mr M that he'd have enough points to take the holidays he wanted, I'm afraid there's insufficient evidence to demonstrate that was a false statement of fact at that time. It's not known, for example, what specific holiday desires were discussed at the Time of Sale which any such representation may have been based on.

- It's possible that, if the Supplier told Mr M that he was being offered a "one time opportunity" which was only available that day, then this could have been true. There's not enough persuasive evidence for me to be able to say that it wasn't.

What's more, as there's nothing else on file that persuades me there were any false statements of existing fact made to Mr M by the Supplier at the Time of Sale, I do not think there was an actionable misrepresentation by the Supplier for the reasons he alleges.

For these reasons, therefore, I do not think the Lender is liable to pay Mr M any compensation for the alleged misrepresentations of the Supplier. And with that being the case, I do not think the Lender acted unfairly or unreasonably when it dealt with the Section 75 claim in question.

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

I have already explained why I am not persuaded that the contract entered into by Mr M was misrepresented by the Supplier in a way that makes for a successful claim under Section 75 of the CCA and outcome in this complaint. But Mr M also says that the credit relationship between him and the Lender was unfair under Section 140A of the CCA, when looking at all the circumstances of the case, including parts of the Supplier's sales process at the Time of Sale that he has concerns about. It is those concerns that I explore here.

I have considered the entirety of the credit relationship between Mr M and the Lender along with all of the circumstances of the complaint and I do not 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 Supplier's sales and marketing practices at the Time of Sale – which includes training material that I think is likely to be relevant to the sale; and
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;
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 Mr M and the Lender.

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

Mr M's complaint about the Lender being party to an unfair credit relationship was also made for several reasons, all of which I set out at the start of this decision.

Mr M says that he was pressured by the Supplier into purchasing Fractional Club membership at the Time of Sale. I acknowledge that he may have felt worn down by a sales process that went on for a long time. But he says little about what was said and/or done by the Supplier during his sales presentation that made him feel as though he had no choice but to purchase Fractional Club membership he simply did not want to. And while Mr M says he was not told about any cooling off period, I am aware the Supplier's standard paperwork, which Mr M would have needed to have signed, explained in multiple places that there was a 14-day cooling off period.[2] Moreover, this purchase was an upgrade of an existing

[2] A full copy of the Purchase Agreement has not been provided by any party to this complaint, so the specific pages are not in evidence for this case. I think it's likely they would have been included and

membership, and Mr M went on to upgrade his Fractional Club membership again – which I find difficult to understand if the reason he went ahead with the purchase in question was because he was pressured into it. And with all of that being the case, there is insufficient evidence to demonstrate that Mr M made the decision to purchase Fractional Club membership because his ability to exercise that choice was significantly impaired by pressure from the Supplier.

Mr M also says the rate of interest on the Credit Agreement was excessive. At 18.9% APR, or 12.2% per annum, the rate of interest on the Credit Agreement appears to have been within the range of interest rates offered by many lenders around the Time of Sale for unsecured loans of a similar amount.[3] It does not appear to have been an "excessive" rate of interest.

I'm not persuaded, therefore, that Mr M's credit relationship with the Lender was rendered unfair to him under Section 140A for any of the reasons above. But there is another reason, perhaps the main reason based on PR2's submissions, that his relationship with the Lender may have been unfair to him. And that's the suggestion that Fractional Club membership was marketed and sold to him as an investment in breach of prohibition against selling timeshares in that way.

Was Fractional Club membership marketed and sold at the Time of Sale as an investment in breach of regulation 14(3) of the Timeshare Regulations?

The Lender does not dispute, and I am satisfied, that Mr M'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 membership of the Fractional Club 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 PR says that the Supplier did exactly that at the Time of Sale. So, that is what I have considered next.

The term "investment" is not defined in the Timeshare Regulations. In *Shawbrook & BPF v FOS*, the parties agreed that, 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*" at [56]. I will use the same definition.

As I've already indicated above, Mr M's share in the Allocated Property clearly, in my view, constituted an investment as it offered him the prospect of a financial return – whether or not, like all investments, that was more than what he first put into it. But 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*.

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signed, but if either party wishes to pursue this point they should provide as full a copy of the Purchase Agreement and associated paperwork that they have in their possession.

[3] *Moneyfacts*, Issue 287, September 2012

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

To conclude, therefore, that Fractional Club membership was marketed or sold to Mr M 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 him as an investment, i.e. told him or led him to believe that Fractional Club membership offered him the prospect of a financial gain (i.e., a profit) given the facts and circumstances of *this* complaint.

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

On the one hand, I am aware that the Supplier generally made efforts to avoid specifically describing membership of the Fractional Club as an 'investment' or quantifying to prospective purchasers, such as Mr M, 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. There were, for instance, normally disclaimers in the contemporaneous paperwork that state that Fractional Club membership was not sold as an investment.[4] So, it's *possible* that Fractional Club membership wasn't marketed or sold to Mr M as an investment in breach of Regulation 14(3).

On the other hand, I acknowledge that the Supplier's training material left open the possibility that the sales representative may have positioned Fractional Club membership as an investment. Indeed, the training materials associated with the version of the Fractional Club Mr M bought into at the Time of Sale[5], appear expressly to describe Fractional Club membership as such. So, I accept that it's equally possible that Fractional Club membership was marketed and sold to Mr M as an investment in breach of Regulation 14(3).

Difficulties concerning Mr M's testimony

I turn now to the testimony we have received over the years from Mr M, as I think this is key evidence in establishing whether the Supplier sold or marketed the Fractional Club membership to him as an investment, and whether any such improper marketing was material to his purchasing decision.

As I've indicated previously, we have two sets of testimony from Mr M. We have his original testimony from 2017, and we have a second witness statement which was produced much later, in or around December 2023.

Mr M's original witness statement does not say that the Supplier marketed or sold the Fractional Club membership to him as an investment. The statement is somewhat generic in nature and focuses more on alleged omissions by the Supplier. It has the appearance of having been drafted by PR1. There was an attached questionnaire which was, in my view, somewhat leading. For example, under "The Salesman Said", Mr M was invited to tick next to a variety of allegedly false statements.

Mr M ticked next to "The timeshare he was selling was an investment". Mr M was then invited later in the questionnaire to *"expand on the examples given"* or provide examples of other things he had been told at the Time of Sale. He was given *"an area whereby you can explain…what you were told, why the statement was false, and why it was of material*

[4] Again, full copies of the Purchase Agreement have not been supplied, but I am aware that the Supplier's standard paperwork contained such disclaimers.
[5] Sometimes known as "FPOC1".

significance to you when acquiring the timeshare…" Mr M did not write anything in the free-text boxes provided, but he did go on to write on separate sheets. Under the heading "Product 2", which referred to the purchase made at the Time of Sale, Mr M wrote:

> *"When we bought Product 1 we were given a voucher for another "free week" and were invited to another presentation. They played with figures and advised that we could buy more points – foolishly we did."*

That was all Mr M had to say about the purchase, in his own words.

The witness statement we received from Mr M in December 2023, via PR2, was very different in respect of the allegation that the Supplier had sold the Fractional Club membership to him as an investment.

Before I go on to consider the content of the statement, it's important to explain that earlier in 2023 the High Court had handed down its judgment in the case of *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*'). The judgment emphasised how the sale of a timeshare as an investment could lead to the credit relationship between a consumer and a connected lender, being rendered unfair to the consumer, warranting compensation.

It's also important to note that our Investigator had issued their assessment prior to Mr M's second witness statement, in which they'd explained why they didn't think the complaint should be upheld. PR2 responded to our Investigator's assessment on Mr M's behalf, saying he disagreed on the basis the Fractional Club membership had been sold to him as an investment, thus rendering his credit relationship with the Lender unfair to him, and provided the second witness statement in support of this appeal against the Investigator's assessment.

Mr M's second witness statement refers to the Fractional Club membership being described, marketed or sold as an investment, in several parts of the statement. To summarise:

- Mr M recalled the Supplier saying it had changed its timeshare model to selling part ownership of properties, and the offer was an opportunity to invest in holiday property which could be used or rented out.
- Mr M recalled being told that he would own holiday rental property, which was classed as an investment in Spain.
- At each sale he was told this was a kind of property investment which was a good investment because the value was growing faster than inflation.
- For the second and third sale the emphasis had been on moving his fractional timeshare to the Canary Islands and then trading up to two weeks' worth of timeshare, because there was more potential for growth in property value in that location.

While Mr M does indicate (in the sense that he ticked the box on the questionnaire) in his earlier testimony that the Supplier described the timeshare as an investment, that is the only mention of it. He does not say or suggest that any financial gain or profit was referred to or implied. He does not mention it at all in his own words, either in the statement written at that time or the comments handwritten on the separate sheets of paper.

It was only after our Investigator's assessment and the handing down of the judgment in *Shawbrook & BPF v FOS* that we were sent evidence that Mr M recalled that the Supplier led him to believe that Fractional Club membership offered him the prospect of a financial

gain. 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. In light of this, I find it difficult to understand how and why the Financial Ombudsman Service was only given such evidence when it was, some 13 years after the Time of Sale, and how Mr M's recollections that long after the Time of Sale, were clearer and more detailed than his recollections from five years after the Time of Sale.

The difficulties I have with Mr M's more recent testimony mean I am unable to attach much, if any, weight to it, except where it is corroborated by other evidence.

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

Was the credit relationship between the Lender and Mr M rendered unfair to him?

As the Supreme Court's judgment in *Plevin* makes clear, it does not automatically follow that regulatory breaches create unfairness for the purposes of Section 140A. Such breaches and their consequences (if there are any) must be considered in the round, rather than in a narrow or technical way.

And in light of what the courts had to say in *Carney* and *Kerrigan,* it seems to me that, if I am to conclude that a breach of Regulation 14(3) led to a credit relationship between Mr M and the Lender that was unfair to him and warranted relief as a result, whether the Supplier's breach of Regulation 14(3) led him to enter into the Purchase Agreement and the Credit Agreement is an important consideration.

But as I've already said, there was no suggestion in Mr M's initial recollections of the sales process at the Time of Sale that the Supplier led him to believe that the Fractional Club membership was an investment from which he would make a financial gain nor was there any indication that he was induced into the purchase on that basis.

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 Mr M'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, the evidence from closer to the time appears to suggest that he made the purchase to obtain more points in the Fractional Club. And for that reason, I do not think the credit relationship between Mr M and the Lender was unfair to him even if the Supplier had breached Regulation 14(3).

The payment of a commission by the Lender to the Supplier

One of PR1's arguments was, in essence, that a payment of commission from the Lender to the Supplier at the Time of Sale should lead me to uphold this complaint because, simply put, information in relation to that payment went undisclosed at the Time of Sale.

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

The Supreme Court ruled that, in each of the three cases, the commission payments made to car dealers by lenders were legal, as claims for the tort of bribery, or the dishonest

assistance of a breach of fiduciary duty, had to be predicated on the car dealer owing a fiduciary duty to the consumer, which the car dealers did not owe. A "disinterested duty", as described in *Wood v Commercial First Business Ltd & ors and Business Mortgage Finance 4 plc v Pengelly* [2021] EWCA Civ 471, is not enough.

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

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

2. The failure to disclose the commission; and

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

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

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

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

3. The characteristics of the consumer;

4. The extent of any disclosure and the manner of that disclosure (which, insofar as

   Section 56 of the CCA is engaged, includes any disclosure by a supplier when acting as a broker); and

5. Compliance with the regulatory rules.

From my reading of the Supreme Court's judgment in *Hopcraft, Johnson and Wrench*, it sets out principles which apply to credit brokers other than car dealer–credit brokers. So, when considering allegations of undisclosed payments of commission like the one in this complaint, *Hopcraft, Johnson and Wrench* is relevant law that I'm required to consider under 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 M in arguing that his credit relationship with the Lender was unfair to him for reasons relating to commission given the facts and circumstances of this complaint.

I 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 M, 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 M into a credit agreement that cost disproportionately more than it otherwise could have.

I acknowledge that it's possible that the Lender and the Supplier failed to follow the regulatory guidance in place at the Time of Sale insofar as it was relevant to disclosing the commission arrangements between them.

But as I've said before, the case law on Section 140A makes it clear that regulatory breaches do not automatically create unfairness for the purposes of that provision. Such breaches and their consequences (if there are any) must be considered in the round, rather than in a narrow or technical way. And with that being the case, it isn't necessary to make a formal finding on that because, even if the Lender and the Supplier failed to follow the relevant regulatory guidance at the Time of Sale, it is for the reasons set out below that I don't currently think any such failure is itself a reason to find the credit relationship in question unfair to Mr M.

In contrast to the facts of Mr Johnson's case, the amount of commission paid by the Lender to the Supplier for arranging the Credit Agreement that Mr M entered into wasn't high. At £476.73, it was only 10.25% of the amount borrowed. So, had he known at the Time of Sale that the Supplier was going to be paid a flat rate of commission at that level, I'm not currently persuaded that he either wouldn't have understood that or would have otherwise questioned the size of the payment at that time. After all, Mr M seems to have wanted Fractional Club membership and had no obvious means of his own to pay for it. And at such a low level, the impact of commission on the cost of the credit he needed for a timeshare it seems he wanted doesn't strike me as disproportionate. So, I think he would still have taken out the loan to fund his purchase at the Time of Sale had the amount of commission been disclosed.

What's more, based on what I've seen so far, the Supplier's role as a credit broker wasn't a separate service and distinct from its role as the seller of timeshares. It was simply a means to an end in the Supplier's overall pursuit of a successful timeshare sale. I can't see that the Supplier gave an undertaking – either expressly or impliedly – to put to one side its commercial interests in pursuit of that goal when arranging the Credit Agreement. And as it wasn't acting as an agent of Mr M but as the supplier of contractual rights he obtained under the Purchase Agreement, the transaction doesn't strike me as one with features that suggest the Supplier had an obligation of 'loyalty' to him when arranging the Credit Agreement and thus a fiduciary duty.

Overall, therefore, I'm not currently persuaded that the commission arrangements between the Supplier and the Lender were likely to have led to a sufficiently extreme inequality of knowledge that rendered the credit relationship unfair to Mr M.

Section 140A: Conclusion

Given all of the factors I've looked at in this part of my decision, and having taken all of them into account, I'm not persuaded that the credit relationship between Mr M and the Lender under the Credit Agreement and related Purchase Agreement was unfair to him. And as things currently stand, I don't think it would be fair or reasonable that I uphold this complaint on that basis.

Commission: The Alternative Grounds of Complaint

While I've found that Mr M's credit relationship with the Lender wasn't unfair to him for reasons relating to the commission arrangements between it and the Supplier, two of the grounds on which I came to that conclusion also constitute separate and freestanding complaints to Mr M'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 M (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 M a fiduciary duty. So, the remedies that might be available at law in relation to the payment of secret commission aren't, in my view, available to him. And while it's possible that the Lender failed to follow the regulatory guidance in place at the Time of Sale insofar as it was relevant to disclosing the commission arrangements between 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 he would still have taken out the loan to fund his purchase at the Time of Sale had there been more adequate disclosure of the commission arrangements that applied at that time.

Conclusion

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

If there is any further information on this complaint that Mr M wishes to provide, I would invite him to do so in response to this provisional decision.

My provisional decision

For the reasons explained above, I'm not currently minded to uphold this complaint.

Will Culley
Ombudsman