DRN-6220631

The complaint

Mr B and Ms J's complaint is, in essence, that First Holiday Finance Ltd (the "Lender") acted unfairly and unreasonably by (1) being party to an unfair credit relationship with them under Section 140A of the Consumer Credit Act 1974 (as amended) (the "CCA") and (2) deciding against paying claims under Section 75 of the CCA.

What happened

I issued my provisional decision to both parties explaining why I didn't think Mr B and Ms J's complaint should be upheld and invited both parties to provide any further evidence and / or submissions in reply.

The background to this complaint was set out in my provisional decision together with my provisional findings which are both copied below and now form part of this final decision.

Background to the complaint

In October 2012, Mr B and Ms J entered a purchase agreement to buy 1,160 Fractional Club membership points from a timeshare company (the "Supplier") for a price of £13,499. They paid a deposit of £500 by card, leaving £12,999 to pay. Mr B and Ms J paid for this by entering into a fixed sum loan agreement ("Loan 1") and they agreed to repay in 144 monthly instalments of £185, with interest set at a flat rate of 13.81% per annum.

In April 2013, Mr B and Ms J then entered into a second purchase agreement to buy a further 334 Fractional Club membership points, taking their total number of points to 1,494. They again paid a £500 deposit by card and entered into a second fixed sum loan agreement ("Loan 2"), borrowing £17,237 to cover the remaining cost of the additional points and to settle Loan 1. Mr B and Ms J were to repay Loan 2 over 144 monthly instalments of £246, with interest set at a flat rate of 13.81% per annum. Mr B and Ms J have not brought their second purchase agreement nor Loan 2 as part of this complaint.

In November 2013, Mr B and Ms J then entered into their third and final purchase agreement to buy a further 326 Fractional Club membership points for a price of £4,425, taking their total number of points to 1,820 They again paid a £500 deposit by card and entered into a third fixed sum loan agreement ("Loan 3"), borrowing £21,069 to cover the remaining cost of the additional points and to settle Loan 2. Mr B and Ms J were to repay Loan 3 over 144 monthly instalments of £300, with interest set at a flat rate of 13.81% per annum.

Mr B and Ms J – using a professional representative (the 'PR') – wrote to FHF on 22 November 2019 (the 'Letter of Complaint') to raise a number of different concerns. As those concerns haven't changed since they were first raised, and as both sides are familiar with them, it isn't necessary to repeat them in detail here beyond the summary above.

First Holiday Finance forwarded Mr B and Ms J's complaint to the Supplier, who in turn responded on FHF's behalf and rejected the complaint in its entirety. In doing so, it explained that Mr B and Ms J had only paid the management fees for 2013, and despite attempts at

putting in place an instalment plan, their membership was suspended from use for non-payment of 2014 and 2015 fees.

The complaint was then referred to the Financial Ombudsman Service. It was assessed by an Investigator who, having considered the information on file, said that the complaint about Loan 1 had been made too late. The Investigator upheld the complaint about Loan 3.

Mr B and Ms J and FHL all disagreed with the Investigator's assessment and asked for an Ombudsman's decision – which is why it was passed to me.

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 no different to that shared in several hundred ombudsman decisions on very similar complaints. And with that being the case, it is not necessary to set it out here.

My provisional findings

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 currently think the complaint about Loan 1 falls outside the service's territorial jurisdiction and the complaint about Loan 3 should not be upheld. I'll explain why for each loan in turn.

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 firstly determine our jurisdiction to consider the complaint before then deciding 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.

Loan 1 - October 2012

Section 140A: did First Holiday Finance participate in an unfair credit relationship?

This service doesn't have a free hand to consider every complaint that's brought to us. The rules under which the Financial Ombudsman Service operate are set out by the regulator, the Financial Conduct Authority (FCA). These are known as the DISP rules. These rules set out the limits to what our service can and can't consider. I am entirely bound by the provision of these rules and I cannot disregard them. The relevant rule in this case is set out in DISP 2.6.1R.

For acts and omissions up to 31 December 2020, DISP 2.6.1R states this service can only consider complaints about activities which take place from an establishment in the UK. Having carefully reviewed the evidence on file, I noted that the creditor shown on the fixed sum loan agreement was located on the Isle of Man.

*The FCA – in the handbook glossary – defines the UK as England and Wales, Scotland and Northern Ireland (but not the Channel Islands or **the Isle of Man**). [my emphasis] It is also worth noting that the Isle of Man isn't a territory within the European Economic Area (EEA).*

Section 418 of the Financial Services and Markets Act 2000 ('FSMA') sets out six cases where an activity would be deemed as having taken place within the UK where they would

not otherwise have been regarded as doing so. Example 3 is the most relevant to the circumstances here – it says:

(1) The third case is where –
- *a) his registered office (or if he does not have a registered office his head office) is in the United Kingdom;*
- ***b) the day-to-day management of the carrying on of the regulated activity is the responsibility of***
  - ***(i) his registered office (or head office); or***
  - ***(ii) another establishment maintained by him in the United Kingdom.***

[my emphasis]

The FCA also set out in its Handbook guidance on the territorial scope of Section 418 FSMA in PERG 2.4 – "Link between activities and the United Kingdom". But, in the circumstances of this complaint, I cannot see that PERG 2.4 expands the scope of Section 418 of FSMA beyond what I have already set out above.

Companies House records show that First Holiday Finance Ltd incorporated in the United Kingdom on 16 February 2011, but it remained dormant until 1 August 2015. In another case being considered by this Service, FHFL has submitted an excerpt from the business plan it gave to the FCA when applying for full authorisation in 2015.

FHFL's business plan explains how the entity had been set up and incorporated in the British Virgin Islands (FHFBVI) in 1998. At the same time, its entire lending operation was outsourced to a third-party debt administrator operating from the Isle of Man. Plans for FHFL to start lending from the UK in 2011 were put on hold because of what it described as the 'general economic situation'. All loans continued to be written by FHFBVI, although it's dormant UK entity, which had been incorporated in February 2011, did maintain its Office of Fair Trading (OFT) licence. On 1 August 2015, FHFBVI assigned its entire loan book to First Holiday Finance Ltd (the UK entity, referred to in this decision as FHFL). All new loans were written by FHFL from then on. So, this shows that the finance under the Credit Agreement brokered by the Supplier was provided by FHFBVI, which was operating outside of the UK.

Mr B and Ms J's complaint regarding an unfair credit relationship resulting from the Credit Agreement, is a complaint made against the business which provided the loan – in this case FHFBVI. And as FHFBVI assigned its loan book to FHFL in August 2015, I need to decide whether FHFL had any legal responsibility for the Credit Agreement in question here.

As has been shown, FHFL took over the provision and administration of new and existing loans (including those provided by FHFBVI) on 1 August 2015. But Mr B and Ms J's loan was settled in April 2013 – before FHFBVI assigned its loan book to FHFL. So there was no loan 'handed over' and FHFL had no administrative responsibility for Mr B and Ms J's loan.

It follows that I find Mr B and Ms J's complaint of unfairness pursuant to Section 140A of the CCA against FHFL is not in the jurisdiction of the Financial Ombudsman Service. This is because the activity complained about (whilst being a regulated activity) was carried out by FHFBVI from outside of the UK, and the loan was settled in full prior to the business being operated from within the UK. So, this part of their complaint is outside of the territorial scope of this Service and is not in jurisdiction.

Mr B and Ms J's complaint about FHF's handling of their Section 75 claim (Loan 1)

Certain conditions must be met for section 75 to apply including, but not limited to, the cash price of the purchase and the nature of the arrangements between the parties involved in the transaction. Because of the way in which section 75 operates, if the Supplier is liable for

having misrepresented something to Mr B and Ms J at the Time of Sale or has breached its contract with them, that might give rise to a potential joint and several liability on the part of First Holiday Finance. Equally, of course, if the Supplier has a defence to such a claim, that defence is also available to First Holiday Finance.

Our investigator noted that the Limitation Act 1980 might afford a complete defence to the section 75 claim made by Mr B and Ms J. However, I've not found it necessary to reach a conclusion on that line of argument, because I'm not inclined to find that the conditions necessary to bring a section 75 claim are met in this case.

I say this because it's my understanding that when Mr B and Ms J entered into the Credit Agreement in October 2012, they did so with First Holiday Finance Ltd based in the British Virgin Islands ("FHFBVI") and operating from the Isle of Man, rather than the UK entity of the same name. The UK entity has provided us with evidence that shows it wasn't engaged in regulated lending activity until it applied for permission from the Financial Conduct Authority ("FCA") in 2015.

Section 75 enables a claim to be brought against the creditor. At the time the Credit Agreement was made, the creditor was FHFBVI. By the time FHFBVI assigned its loan book to First Holiday Finance, Mr B and Ms J's first loan was settled and so it didn't necessarily follow that its duties or other obligations – such as any potential liability for a section 75 claim – were similarly assigned. Although the CCA section 189(1) definition of creditor includes an assignee, Goode[1] indicates that this shouldn't be interpreted as creating a positive liability on the assignee for a monetary claim under (among other things) section 75.

That's not to say that a claim can't be made along the lines outlined by Mr B and Ms J. Rather, it highlights the inherent difficulty they might face in succeeding with that claim. And with this in mind, I can't say that First Holiday Finance acted unfairly or unreasonably towards Mr B and Ms J when it declined to pay them compensation for the claim they said it was liable for under section 75.

Summary

I do not currently think those rules allow me to consider Mr B and Ms J's complaint of unfairness under Section 140A of the CCA. I also don't think FHF's handling of their Section 75 claim was unfair or that their complaint about this should succeed.

Loan 3 - November 2013

Mr B and Ms J's complaint about FHF's handling of their Section 75 claim (Loan 3)
The same conditions that needed to be met for Loan 1 also apply to Loan 3. Again, it's my understanding that when Mr B and Ms J entered into the Credit Agreement in November 2013, they did so with First Holiday Finance Ltd based in the British Virgin Islands ("FHFBVI") and operating from the Isle of Man, rather than the UK entity of the same name.

Section 75 enables a claim to be brought against the creditor. At the time the Credit Agreement was made, the creditor was FHFBVI. While FHFBVI assigned its loan book (including Mr B and Ms J's third loan) to First Holiday Finance, it didn't necessarily follow that its duties or other obligations – such as any potential liability for a section 75 claim – were similarly assigned. Although the CCA section 189(1) definition of creditor includes an

[1] Goode: Consumer Credit Law and Practice – Division I Commentary – Part IC Consumer Credit Legislation – 45A Assignment – III Assignment and the CCA 1974: the assignee as creditor/lender or owner – 1 The basic rule – Pre-assignment breaches (para 45A.62)

assignee, Goode indicates that this shouldn't be interpreted as creating a positive liability on the assignee for a monetary claim under (among other things) section 75.

That's not to say that a claim can't be made along the lines outlined by Mr B and Ms J. Rather, it highlights the inherent difficulty they might face in succeeding with that claim. And with this in mind, I can't say that First Holiday Finance acted unfairly or unreasonably towards Mr B and Ms J when it declined to pay them compensation for the claim they said it was liable for under section 75.

Section 140A: did First Holiday Finance participate in an unfair credit relationship?

I've explained why I'm not persuaded Mr B and Ms J's relationship with First Holiday Finance could lead to a successful section 75 claim and outcome in this complaint. But Mr B and Ms J also make arguments that either say or infer that the credit relationship between them and First Holiday Finance was unfair under section 140A of the CCA, when looking at all the circumstances of the case, including the Supplier's representations and parts of its sales process at the Time of Sale they've mentioned.

Mr B and Ms J's loan from FHFBVI was written under English law and regulated under the CCA. First Holiday Finance acquired and continued to administer the loan when Mr B and Ms J made their complaint, so section 140A of the CCA is relevant law. It is not subject to the same difficulty as their section 75 claim.[2] So determining what's fair and reasonable in all the circumstances of the complaint includes considering whether the credit relationship between Mr B and Ms J and First Holiday Finance was unfair.

Having considered the entirety of the credit relationships[3] between Mr B and Ms J and FHF along with all of the circumstances of the complaint, I don't think the credit relationships between them were 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 Times of Sale along with any relevant training material;*
2. *The provision of information by the Supplier at the Times 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 Times of Sale;*
4. *The inherent probabilities of the sale given its circumstances; and, when relevant*
5. *Any existing unfairness from a related credit agreement.*

I have then considered the impact of these on the fairness of the relevant credit relationships between Mr B and Ms J and FHF.

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

Mr B and Ms J's complaint about FHF being party to unfair credit relationships was and is made for several reasons.

The PR says, for instance, that:

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[2] *Goode* (para 45A.65) indicates that section 140B empowers a Court to impose a positive liability on an assignee

[3] As Loan 1 was consolidated by Loan 2, which was in turn consolidated by Loan 3 and assigned to FHL, the purchase agreement Mr B and Ms J entered in December 2012 is a *related agreement* for the purposes of section 140C(7) CCA.

1. *Mr B and Ms J were pressured by the Supplier into purchasing Fractional Club membership at the Time of Sale.*
2. *the right checks weren't carried out before FHF lent to Mr B and Ms J.*
3. *the loan interest was excessive.*
4. *The Credit Agreement was arranged by a broker acting outside of its authorisation.*
5. *Mr B and Ms J were not given a choice of lender by the Supplier.*

However, as things currently stand, none of these strike me as reasons why this complaint should succeed.

I acknowledge that Mr B and Ms J may have felt weary after a sales process that went on for a long time. But they say little about what was said and/or done by the Supplier during their sales presentations that made them feel as if they had no choice but to purchase Fractional Club memberships when they simply did not want to. they were also given 14-day cooling off periods and they have not provided a credible explanation for why they did not cancel their memberships during that time. And with all of that being the case, there is insufficient evidence to demonstrate that Mr B and Ms J made the decision to purchase Fractional Club memberships because their ability to exercise that choice was significantly impaired by pressure from the Supplier.

I haven't seen anything to persuade me that the right checks weren't carried out by FHF given this complaint's circumstances. But even if I were to find that FHF 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 B and Ms J was actually unaffordable before also concluding that they lost out as a result and then consider whether the credit relationships with FHF was unfair to them for this reason. But from the information provided, I am not satisfied that the lending was unaffordable for the Mr B and Ms J.

Connected to this is the suggestion by the PR that the Credit Agreements were arranged by an unauthorised credit broker [and that the fact that the loan was used to refinance an earlier one wasn't set out in the Credit Agreement], the upshot of which is to suggest that FHF wasn't permitted to enforce the Credit Agreements. Notwithstanding the fact Mr B and Ms J the loans with FHFBVI and outside the regulatory reach of UK regulation, it looks to me like that they knew, amongst other things, how much they were borrowing and repaying each month, who they were borrowing from, that they were refinancing an earlier loan and that they were borrowing money to pay for Fractional Club membership. And as the lending doesn't look like it was unaffordable for them, even if the Credit Agreements were arranged by a broker that didn't have the necessary permission to do so (which I make no formal finding on), I can't see why that led to Mr B and Ms J suffering a financial loss – such that I can say that the credit relationships in question were unfair to them as a result. And with that being the case, I'm not persuaded that it would be fair or reasonable to tell FHF to compensate them, even if the loans weren't arranged properly.

Similarly, the PR has not explained how, if it were true, Mr B and Ms J not being offered a different lender to pay for Fractional Club membership caused them any unfairness or financial loss. Mr B and Ms J were aware of the interest rate set out on the face of the Credit Agreements, as well as the term of the loans and the monthly repayments, so they understood what it was they were taking out. Further, I don't think the rate of interest was excessive, compared either to other rates available from other point-of-sale lenders or on the open market, so I can't say it would be fair or reasonable to tell FHF to do anything because of this.

Overall, therefore, I don't think that Mr B and Ms J credit relationship with FHF was rendered unfair to them 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 FHF was unfair

to them. And that's the suggestion that Fractional Club membership was marketed and sold to them 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

FHF does not dispute, and I am satisfied, that Mr B and Ms J'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 says that the Supplier did exactly that at the Times of Sale.

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.

Shares in the Allocated Properties clearly constituted investments as they offered Mr B and Ms J the prospect of a financial return – whether or not, like all investments, that was more than what they first put into it. But it is important to note at this stage that the fact that Fractional Club membership included an investment element did not, itself, transgress the prohibition in Regulation 14(3). That provision prohibits the marketing and selling of a timeshare contract as an investment. It doesn't prohibit the mere existence of an investment element in a timeshare contract or prohibit the marketing and selling of such a timeshare contract per se.

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

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

There is competing evidence in this complaint as to whether Fractional Club membership was marketed and/or sold by the Supplier at the Times 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 B and Ms J, the financial value of their share in the net sales proceeds of the Allocated Properties along with the investment considerations, risks and rewards attached to them.

On the other hand, I acknowledge that the Supplier's sales processes 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 B and Ms J as investments 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 FHF and the Consumer rendered unfair?

Having found that it was possible that the Supplier breached Regulation 14(3) of the Timeshare Regulations at the Times of Sale, I now need to consider what impact such breaches had on the fairness of the credit relationships between Mr B and Ms J and FHF under the Credit Agreements and related Purchase Agreements 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 credit relationships between Mr B and Ms J and FHF that were unfair to them and warranted relief as a result, whether the Supplier's breach of Regulation 14(3) led them to enter into the Purchase Agreements and the Credit Agreements 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 Mr B and Ms J decided to go ahead with their purchases.

The PR provided notes it said were taken from a telephone conversation it had with Mr B and Ms J in July 2019. These notes record that Mr B and Ms J told the PR that:

"…We complained about the accommodation. We were advised to attend another seminar. We were informed that if the upgraded we would get better accommodation and availability. They would also give a trade-in value of £17K. This made us think that the value of Fractional had gone up by £4K within a year. We were told that the Fractional purchase would be a pension pot…".

There are clearly contradictions between the PR's notes and the chronological order of events – namely Mr B and Ms J not recalling they had made a second purchase in April 2013, six months earlier, paying £17,737 to upgrade their initial purchase. So in Mr B and Ms J saying that their first membership had increased by c.£4,000 is predicated on them not recalling this interim purchase or them, borrowing extra at that time. They also refer to their membership as a pension pot and yet at the time of giving this statement, their membership was suspended because they hadn't paid the management charges that were due from 2014 – the first year of occupancy for their third membership – and beyond.

I don't find in this particular case that I can give enough weight to the PR's notes nor Mr B and Ms J's written statement, given that they are formed on an inaccurate or incomplete recollection of what happened and do not expand on the Supplier's actions to show it sold the timeshare as an investment. I've also not seen in either document Mr B and Ms J suggest that their first membership was sold as an investment.

That doesn't mean they weren't interested in a share in the Allocated Properties. After all, that wouldn't be surprising given the nature of the product at the centre of this complaint. But as Mr B and Ms J themselves don't persuade me that their purchases were motivated by their shares in the Allocated Properties and the possibility of a profit, I don't think breaches of

Regulation 14(3) by the Supplier were likely to have been material to the decisions Mr B and Ms J 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 Mr B and Ms J's decisions to purchase Fractional Club membership at the Times of Sale were motivated by the prospect of a financial gain (i.e., a profit). On the contrary, I think the evidence suggests they would have pressed ahead with their purchases whether or not there had been a breach of Regulation 14(3). And for that reason, I do not think the credit relationships between Mr B and Ms J and FHF were unfair to them even if the Supplier had breached Regulation 14(3).

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

The PR says that Mr B and Ms J were not given sufficient information at the Times of Sale by the Supplier in order to make an informed choice.

As I've already indicated, the case law on Section 140A makes it clear that it does not automatically follow that regulatory breaches create unfairness for the purposes of the unfair relationship provisions. The extent to which such mistakes render a credit relationship unfair must also be determined according to their impact on the complainant.

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

As for the PR's argument that Mr B and Ms J's heirs would inherit the on-going management charges, I fail to see how that could be the case or that it could have led to an unfairness that warrants a remedy.

Mr B and Ms J Commission Complaint

I note that one of Mr B and Ms J other concerns relates to alleged payments of commission by FHF to the Supplier for acting as a credit broker and arranging the Credit Agreement. The PR says that a payment of commission from FHF 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 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 B and Ms J in arguing that their credit relationship with FHF was unfair to them for reasons relating to commission given the facts and circumstances of this complaint.

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 B and Ms J 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 recognise that FHF was and is part of the same group of companies as the Supplier. And I acknowledge that tie may not have been adequately disclosed at the Time of Sale. But I can't currently see why that renders the credit relationship between Mr B and Ms J and FHF unfair to them – such that I should uphold the complaint. I say that because the Supplier had tried without success to find a loan with at least one other of its approved external finance companies, before FHF agreed the loan in question. So, I'm not persuaded that Mr B and Ms J was led into a credit agreement with FHF because it was tied in some way to the Supplier.

What's more, in stark contrast to the facts of Mr Johnson's case, as I understand it, FHF didn't pay the Supplier any commission at the Time of Sale. And with that being the case, even if there were information failings at that time and regulatory failings as a result (which I make no formal finding on), I'm not currently persuaded that the commission arrangements between the Supplier and FHF were likely to have led to a sufficiently extreme inequality of knowledge that rendered the credit relationship unfair to Mr B and Ms J.

Conclusion

In conclusion, as things currently stand, I do not think that FHF acted unfairly or unreasonably when it dealt with the relevant Section 75 claims, and I am not persuaded that FHF was party to credit relationships with Mr B and Ms J under the Credit Agreements that were unfair to them 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 FHF to compensate them.

Responses to my provisional decision

FHF responded to the provisional decision and accepted it.

The PR also responded – they did not accept the provisional decision and provided some further comments and evidence they wish to be considered.

Having received the relevant responses from both parties, I'm now finalising my decision.

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.

Following the responses from both parties, I've considered the case afresh and having done so, I've reached the same decision as that which I outlined in my provisional findings, for broadly the same reasons.

Again, my role as an Ombudsman isn't to address every single point which has been made to date, but to decide what is fair and reasonable in the circumstances of this complaint. If I haven't commented on, or referred to, something that either party has said, this doesn't mean I haven't considered it.

Rather, I've focused here on addressing what I consider to be the key issues in deciding this complaint and explaining the reasons for reaching my final decision.

The PR's further comments in response to the provisional decision only relate to the issue of whether the credit relationship between Mr B and Ms J and FHF was unfair. In particular, the PR has provided further comments in relation to whether the membership was sold to Mr B and Ms J as an investment at the Time of Sale.

As outlined in my provisional decision, the PR originally raised various other points of complaint, all of which I addressed at that time. But they didn't make any further comments in relation to those in their response to my provisional decision. Indeed, they haven't said they disagree with any of my provisional conclusions in relation to those other points. And since I haven't been provided with anything more in relation to those other points by either party, I see no reason to change my conclusions in relation to them as set out in my provisional decision. So, I'll focus here on the PR's points raised in response.

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

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

The PR said I was wrong to 'down-weight' its submissions because of Mr B and Ms J having an inaccurate or incomplete recollection of what happened and not recalling that they had made a second purchase in April 2013. It instead argues that the transaction history demonstrates a consistent pattern of inflated and fictitious trade-in valuations that misled Mr B and Ms J into believing that each successive upgrade represented a sound financial investment by creating the illusion of asset appreciation to induce Mr B and Ms J into making further purchases.

Mr B and Ms J have not said in their witness statement that the Supplier said or did anything to suggest the trade-in value offered for their previous timeshare was somehow indicative of what they were likely to receive when the Allocated Property was sold after the end of the membership term, nor that this was a conclusion they reached from such information. Instead, they said: "*The reason that we upgraded was* [the Supplier's] *representative advised us that the upgrade and points were would be intitled to would be far better and we would have better accommodation and more availability.*"[sic]

I accept that the PR's handwritten call record of a conversation between the PR and Mr B and Ms J notes the trade-in value offered for their previous timeshare had increased by £4,000 within a year. I've already explained in my provisional decision why I can't place sufficient weight on this evidence. Further, the sales material I have seen does not suggest this would have been the case either. So, it seems unlikely to me from the available evidence that the Supplier led Mr B and Ms J to believe they could expect a profit or financial gain from Fractional Club membership on this basis.

Indeed, given the way Fractional Club membership works (i.e. a share of the proceeds of the sale of the Allocated Property are only distributed to members at the end of the membership term when it is sold) I don't think the trade in value offered for a previous timeshare before the end of its term was likely to have been indicative of a future profit or financial gain at the end of the membership term.

The PR has provided further comments and evidence which in my view relate to whether Fractional Club membership was marketed as an investment in breach of the prohibition in Regulation 14(3) of the Timeshare Regulations. However, as I explained in my provisional decision, while the Supplier's sales processes left open the possibility that the sales representative may have positioned Fractional Club membership as an investment, it isn't necessary to make a finding on this as it is not determinative of the outcome of the complaint. I explained that Regulatory breaches do not automatically create unfairness and that such breaches and their consequences (if there are any) must be considered in the round, rather than in a narrow or technical way.

The PR's comments and evidence in this respect do not persuade me that I should uphold Mr B and Ms J's complaint because they do not make me think it's any more likely that the Supplier's breach of Regulation 14(3) led Mr B and Ms J to enter into the Purchase Agreement and the Credit Agreement. Mr B and Ms J said as much in their witness statement when they explained that it was the promise of better accommodation and availability which had led them to upgrade their membership.

The PR has provided its further thoughts as to Mr B and Ms J's likely motivations for purchasing Fractional Club membership. I recognise it has interpreted Mr B and Ms J's testimony differently to how I have and thinks it points to them having been motivated by the prospect of a financial gain from Fractional Club membership.

In my provisional decision I explained the reasons why I didn't think Mr B and Ms J's purchase was motivated by the prospect of a financial gain (i.e., a profit). And although I have carefully considered the PR's arguments in response to this, I'm not persuaded the conclusion I reached on this point were unfair or unreasonable.

I note the PR takes exception to my comment about Mr B and Ms J's membership and it being suspended as they hadn't paid the management fees that were due from 2014 onwards. The PR thinks I'm out of kilter with approach taken by ombudsmen colleagues. I disagree. I accept it might be unreasonable to draw an inference in the circumstances whereby a consumer stops paying management fees after a sustained period of having done so. But here, Mr B and Ms J did not pay their management fees from the outset – and I maintain my view that I find it at odds with the notion that they had considered their then recent purchase a 'pension pot'.

So, ultimately, for the above reasons, along with those I already explained in my PD, I remain unpersuaded that any breach of Regulation 14(3) was material to Mr B and Ms J's purchasing decision. And for that reason, I do not think the credit relationship between Mr B and Ms J and FHF was unfair to them even if the Supplier had breached Regulation 14(3).

S140A conclusion

Given all of the factors I've looked at in this part of my decision, including the relevant relationships, arrangements and payments between FHF and the Supplier and having taken all of them into account, I'm not persuaded that the credit relationship between Mr B and Ms J and FHF under the Credit Agreement and related Purchase Agreement was unfair to them. So, I don't think it is fair or reasonable that I uphold this complaint on that basis.

My final decision

For the reasons set out above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B and Ms J to accept or reject my decision before 13 April 2026.

Stefan Riedel
Ombudsman