

## **The complaint**

Mrs T's complaint is, in essence, that Mitsubishi HC Capital UK PLC trading as Novuna Personal Finance (the 'Lender') acted unfairly and unreasonably by (1) being party to unfair credit relationships with her under Section 140A of the Consumer Credit Act 1974 (as amended) (the 'CCA') and (2) deciding against paying claims under Section 75 of the CCA.

## **What happened**

Mrs T purchased membership of a timeshare that I'll call the 'Fractional Club' – points in which she purchased on the dates below:

- 1200 fractional points on 9 May 2016 for £12,768 ('Purchase Agreement 1')
- 900 additional fractional points on 20 June 2017 for £6286. ('Purchase Agreement 2')

(when appropriate, I'll simply refer to the "Purchase Agreements")

As this complaint is concerned with the purchases on 9 May 2016 and 20 June 2017, those are the 'Times of Sale' for the purposes of my decision. Mrs T entered into the memberships with another person. But as she is solely named on the credit agreements with the Lender, only she is able to bring this complaint to us.

Fractional Club membership was asset backed – which meant it gave Mrs T more than just holiday rights. It also included a share in the net sale proceeds of a property named on the relevant purchase agreement (which I'll refer to as the 'Allocated Properties') after her membership term ends.

Mrs T paid for her fractional points by taking the following amounts of finance of from the Lender:

- £12,768 on 9 May 2016 ('Credit Agreement 1')
- £7879 on 20 June 2017 ('Credit Agreement 2')

(when appropriate, I'll simply refer to the "Credit Agreements")

Mrs T – using a professional representative (the 'PR') – wrote to the Lender on 16 February 2022 (the 'Letter of Complaint') to raise a number of different concerns. As those concerns haven't changed since they were first raised, and as both sides are familiar with them, it isn't necessary to repeat them in detail here beyond the summary above.

The Lender dealt with Mrs T concerns as a complaint and issued its final response letters on 5 April 2022, rejecting them on every ground.

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

Mrs T disagreed with the Investigator's assessment and asked for an Ombudsman's

decision – which is why it was passed to me.

I issued a provisional decision (PD) on 26 February 2026. In my PD, I said:

*‘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 Times of Sale**

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*The CCA introduced a regime of connected lender liability under section 75 that affords consumers (“debtors”) a right of recourse against lenders that provide the finance for the acquisition of goods or services from third-party merchants (“suppliers”) in the event that there is an actionable misrepresentation and/or breach of contract by the supplier.*

*Certain conditions must be met if the protection afforded to consumers is engaged, including, for instance, the cash price of the purchase and the nature of the arrangements between the parties involved in the transaction. The Lender doesn’t dispute that the relevant conditions are met. But for reasons I’ll come on to below, it isn’t necessary to make any formal findings on them here.*

*It was said in the Letter of Complaint that Fractional Club membership had been misrepresented by the Supplier at the Times of Sale because Mrs T was:*

- 1. Told that she had purchased an investment that would “considerably appreciate in value”.*
- 2. Promised a considerable return on her investment because she was told that she would own a share in a property that would considerably increase in value.*
- 3. Told that she could sell their Fractional Club membership to the Supplier or easily to third parties at a profit.*
- 4. Made to believe that she would have access to “the holiday apartment” at any time all year round.*

*However, neither points 1 nor 2 strike me as misrepresentations even if such representations had been made by the Supplier (which I make no formal finding on). Telling prospective members that they were investing their money because they were buying a fraction or share of one of the Supplier’s properties was not untrue. And 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 a honestly held opinion as there isn’t any accompanying 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 held.*

*As for points 3 and 4, while it’s possible that Fractional Club membership was misrepresented at the Time of Sale for one or both of those reasons, I don’t think it’s probable. They’re given little to none of the colour or context necessary to demonstrating that the Supplier made false statements of existing fact and/or opinion. And as there isn’t any other evidence on file to support the suggestion that Fractional Club membership was misrepresented for these reasons, I don’t think it was.*

*So, while I recognise that Mrs T and the PR have concerns about the way*

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

### **Section 140A of the CCA: did the Lender participate in one or more unfair credit relationships?**

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*I've already explained why I'm not persuaded that Fractional Club membership was actionably misrepresented by the Supplier at the Times of Sale. But there are other aspects of the sales processes 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 relationships between Mrs T and the Lender 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 Mrs T and the Lender.*

#### **The Supplier's sales & marketing practices at the Times of Sale**

*Mrs T's complaint about the Lender being party to unfair credit relationships was made for several reasons.*

*The PR says, for instance, that the right checks weren't carried out before the Lender lent to Mrs T. I haven't seen anything to persuade me that 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 Mrs T was actually unaffordable before also concluding that she lost out as a result and then consider whether the credit relationships with the Lender was unfair to her for this reason. But from the information provided, I am not satisfied that the lending was unaffordable for Mrs T.*

*Connected to this is the suggestion by the PR that the Credit Agreements were arranged by an unauthorised credit broker, the upshot of which is to suggest that the Lender wasn't permitted to enforce the Credit Agreements. However, it looks to me like Mrs T knew, amongst other things, how much she was borrowing and repaying each month, who she was borrowing from and that she was borrowing money to pay for Fractional Club membership. And as none of the lending looks like it was unaffordable for her, even if the one or more of 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 Mrs T suffering financial loss – such that I can say that the credit relationships in question were unfair on her*

as a result. And with that being the case, I'm not persuaded that it would be fair or reasonable to tell the Lender to compensate Mrs T, even if the loans weren't arranged properly.

The PR also says that there was one or more unfair contract terms in the Purchase Agreements. But as I can't see that any such terms were operated unfairly against Mrs T in practice, nor that any such terms led her to behave in a certain way to her detriment, 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.

I acknowledge that Mrs T may have felt weary after sales processes that went on for a long time. But I don't find that she's provided sufficiently persuasive evidence as to what was said and/or done by the Supplier during the sales presentations that made her feel as if she had no choice but to purchase Fractional Club membership when she simply did not want to. She also given a 14-day cooling off period and she has not provided a credible explanation for why she did not cancel her membership during that time. Moreover, she did go on to upgrade her 2016 membership – which I find difficult to understand if the reason she went ahead with the purchases in question was because she was pressured into them. And with all of that being the case, there is insufficient evidence to demonstrate that Mrs T made the decisions to purchase Fractional Club membership because her ability to exercise that choice was significantly impaired by pressure from the Supplier.

Overall, therefore, I don't think that Mrs T's credit relationships with the Lender 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 says the credit relationships with the Lender was unfair to Mrs T. 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

Shares in the Allocated Properties clearly constituted investments as they offered Mrs T 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 Mrs T 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 Mrs T, 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 process left open the possibility that the sales representative may have positioned Fractional Club membership as an investment. So, I accept that it's equally possible that Fractional Club membership was marketed and sold to Mrs T as an investment in breach of Regulation 14(3).*

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

*Would the credit relationships between the Lender and Mrs T have been rendered unfair to her had there been a breach of Regulation 14(3) of the Timeshare Regulations?*

*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 Mrs T and the Lender 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 Mrs T and the Lender that were unfair to her and warranted relief as a result, whether the Supplier's breach of Regulation 14(3) led her to enter into the Purchase 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 Mrs T decided to go ahead with her purchases. That doesn't mean she wasn'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 Mrs T doesn't persuade me that her purchases were motivated by her 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 Mrs T ultimately made.*

*I've reached that conclusion taking into account Mrs T's witness statement, which was dated 17 December 2024, i.e. after the mid-2023 judgment in the case of Shawbrook & BPF v FOS<sup>iii</sup> gave a public indication of what might make for a successful claim in cases involving alleged mis-selling of timeshares. It was also received after our investigator had told the PR that he didn't think Mrs T's complaint should be upheld.*

*This doesn't necessarily mean that the witness statement we've received does not represent what Mrs T remembered, in 2023, of what the Supplier had said or what her understanding was in 2016 and 2017. But I have to consider that there's a real possibility that any testimony produced now risks having been influenced by later events such as those I've outlined above. All of this affects the weight I think I ought to place on Mrs T's evidence. So I have thought about the detail of what she has said, along with all of the other evidence available in this complaint, to decide what I think most likely happened.*

*Mrs T says the memberships were presented as 'win-win' opportunity if she signed-up, as at the end of the term, the properties would be sold and she'd receive a profit. She says she was told the membership would provide a guaranteed which would give Mrs T a lump sum to invest in a retirement property. I'd add though that's there's little detail as to what the Supplier said to make Mrs T believe this would be the case or what those guaranteed returns might have been. I've considered Mrs T's testimony carefully, and, as I've acknowledged, it's possible that the Lender breached Regulation 14(3) of the Timeshare Regulations at the Time of Sale, so it's possible her memories of the sale are right.*

*On the other hand, Mrs T says that she believed the memberships would provide fantastic accommodation and exclusive apartments and facilities over the life of the contracts. She's also referred to being offered bi-annual membership and a bonus week holiday as an incentive. She says that her experience of the holidays was poor and the quality of the accommodation she stayed in was appalling. She's also said she was informed she hadn't purchased enough points in 2016 to buy an annual holiday. It seems to me then that the ability to take holidays was of real importance to Mrs T when she decided to purchase Fractional Club memberships – and indeed, it seems clear that Mrs T did make use of her memberships.*

*I've carefully considered all of the evidence. As I've said, I accept the possibility that Mrs T was sold membership as an investment and that this may have been a real consideration for her. But I don't think this was the motivating factor behind the purchases. Instead, I think it's more likely than not that the main factor behind Mrs T's decision to purchase Fractional Memberships was the ability to make use of the membership to take holidays. So whilst she does make some reference to being told there she'd receive a profit, I am not persuaded that anything she was told about this had a material impact on her decision to take out membership.*

*On balance, therefore, even if the Supplier had marketed or sold the Fractional Club membership as an investment in breach of Regulation 14(3) of the Timeshare Regulations, I am not persuaded that Mrs T'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 she would have pressed ahead with her 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 Mrs T and the Lender were unfair to her even if the Supplier had breached Regulation 14(3).'*

I explained too why I wasn't 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 Mrs T.

I added:

#### **'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 relationships between Mrs T and the Lender under the Credit Agreements and related Purchase Agreements were unfair to them And as things currently stand, I don't think it would be fair or reasonable that I uphold this complaint on that basis.'*

I also said while it was possible that the Lender had failed to follow the regulatory guidance in place at the Times of Sale insofar as it was relevant to disclosing the commission arrangements between it and the Supplier, I didn't think any such failure on the Lender's part is itself a reason to uphold this complaint because I thought Mrs T would still have taken out

the loan to fund her purchase at the Time of Sale had there been more adequate disclosure of the commission arrangements that applied at that time.

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

The Lender did not respond to the PD.

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

As the deadline for responding to the PD has now passed, I'm now finalising my decision.

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

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.

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 PD in the main relate to the issue of whether the credit relationship between Mrs T and the Lender was unfair. In particular, the PR has provided further comments in relation to whether the membership was sold to Mrs T as an investment at the Time of Sale. They've also reiterated their concerns that the payment of commission by the Lender to the Supplier led to an unfair credit relationship.

As outlined in my PD, the PR originally raised various other points of complaint, all of which I addressed at that time. But they didn't make any further substantive comments in relation to those in their response to my PD. 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 substantive 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 PD. So, I'll focus here on the PR's points raised in response.

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

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

The PR explained in their response to my PD that they felt I'd downplayed Mrs T's motivations for purchasing the memberships. They said Mrs T had given explicit and detailed recollections about what the Supplier had said and done at the time. They felt my suggestion that Mrs T's recollections had been influenced by later events was speculative and unfair. And the PR considered Mrs T couldn't have been influenced by the judgment handed down in *Shawbrook and BPF v FOS*<sup>1</sup>, because they said that even if she'd come across it in the press, she wouldn't have understood the complex legal issues involved. They added that Mrs T hadn't seen the Investigator's assessment of her complaint.

Effectively, it seems the PR suggests Mrs T's recollections have not been influenced by either the Investigator's view or the aforementioned judgment.

Part of my assessment of the testimony was to consider *when* it was written, and whether it may have been affected by external factors such as the widespread publication of the outcome of *Shawbrook and BPF v FOS*.

I have thought about what the PR has said, but on balance, I don't find it a credible explanation of the contents of Mrs T's evidence. Here, the PR responded to our Investigator's view to say that Mrs T alleged that Fractional Club membership had been sold to her as an investment and it provided evidence from Mrs T to that effect. I fail to understand how Mrs T disagreed with the view on the basis that the timeshare was sold as

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<sup>1</sup> *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*').

an investment if she didn't know our Investigator's conclusions. It follows, I think it more likely than not, that Mrs T did know about our Investigator's view before her evidence was provided.

So, I maintain that there is a risk that Mrs T's testimony was coloured by the Investigator's view and/or the outcome in *Shawbrook & BPF v FOS*. And, on balance, the way in which the evidence has been provided makes me conclude that I can place little weight on it. 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 Mrs T's purchasing decision.

The PR also said that in the judgment handed down in *Shawbrook & BPF v FOS*, it was not challenged that the product in question was marketed and sold as an investment. But, as I explained in my provisional decision, the Timeshare Regulations did not ban products such as the Fractional Club. They just regulated how such products were marketed and sold. And the judgment referred to did not make a blanket finding that all such products were mis-sold in the way the PR appears to be suggesting. Any complaint needs to be considered in the light of its specific circumstances.

So, as I said before, even if the Supplier had marketed or sold the membership as an investment in breach of Regulation 14(3) (which I still make no finding on here), I'm not persuaded Mrs T's decision to make the purchase was motivated by the prospect of a financial gain. So, I still don't think the credit relationship between Mrs T and the Lender was unfair to her for this reason.

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

The PR says 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 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 Mrs T in arguing that her credit relationship with the Lender was unfair to her 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 Mrs T nor have I seen anything that persuades me that the commission arrangements between them gave the Supplier a choice over the interest rates that led Mrs T into credit agreements that cost disproportionately more than they 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 Times 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 Times of Sale, it is for the reasons set out below that I don't currently think any such failures were themselves a reason to find one or more of the credit relationships in question unfair to Mrs T.

In stark contrast to the facts of Mr Johnson's case, the amount of commission paid by the Lender to the Supplier for arranging the Credit Agreements that Mrs T entered into wasn't high. The level of commission for the 2016 loan was 0.91% of the amount borrowed and the level of commission for the 2017 loan was 2.48% of the amount borrowed. So, had Mrs T known at the Time of Sales that the Supplier was going to be paid a flat rate of commission at those levels, I'm not currently persuaded that she either wouldn't have understood that or would have otherwise questioned the size of the payments at that time. After all, Mrs T wanted Fractional Club membership and had no obvious means of her own to pay for it. And at such a low level, the impact of commission on the cost of the credit she needed for a timeshare she wanted doesn't strike me as disproportionate. So, I think Mrs T would still have taken out the loans to fund her purchases at the Times of Sale had the amounts 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 Mrs T but as the supplier of contractual rights she 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 her 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 Mrs T.

### **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 relationships between Mrs T and the Lender under the Credit Agreements and related Purchase Agreements were unfair to her. So, I don't think it is fair or reasonable that I uphold this complaint on that basis

### **Commission: The Alternative Grounds of Complaint**

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While I've found that Mrs T's credit relationships with the Lenders weren't unfair to her 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 Mrs T'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 Mrs T (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 Mrs T a fiduciary duty. So, the remedies that might be available at law in relation to the payment of secret commission aren't, in my view, available to her. And while it's possible that the Lender failed to follow the regulatory guidance in place at the Times 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 Mrs T would still have taken out the loans to fund her purchases at the Times of Sale had there been more adequate disclosure of the commission arrangements that applied at that time.

### **Conclusion**

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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 Mrs T's Section 75 claims, and I am not persuaded that the Lender was party to credit relationships with her under the Credit Agreement that were unfair to her 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 Mrs T.

### **My final decision**

For the reasons I've given above and in my provisional decision, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs T to accept or reject my decision before 10 April 2026.

Lisa Barham  
**Ombudsman**

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