

The complaint

Mr D's and Mrs S's complaint is, in essence, that Shawbrook Bank Limited (the 'Lender') acted unfairly and unreasonably by being party to an unfair credit relationship with them under Section 140A of the Consumer Credit Act 1974 (as amended) (the 'CCA').

What happened

Mr D and Mrs S were members of a timeshare provider (the 'Supplier') – having purchased a product from it that I'll call the 'Fractional Club' – points in which Mr D and Mrs S purchased on the dates below:

- 1200 fractional points on 24 June 2014 for £12,294 (Purchase Agreement 1)
- 1540 fractional points on 29 July 2015 for £9,467 having traded in the first lot of 1200 fractional points. ('Purchase Agreement 2')

As this complaint is concerned with the purchases on 24 June 2014 and 29 July 2015 those are the 'Times of Sale' for the purposes of my decision.

Fractional Club membership was asset backed – which meant it gave Mr D and Mrs S 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 Property 1 and 2') after their membership term ends.

Mr D and Mrs S paid for their Fractional Club membership by taking the following amount of finance from the Lender:

- £12,294 on 24 June 2014 ('Credit Agreement 1')
- £21,720 on 29 July 2015 which included consolidation of the amount outstanding balance on the first loan ('Credit Agreement 2')

Mr D and Mrs S – using a professional representative (the 'PR') – wrote to the Lender on 28 June 2023 in respect of both credit agreements (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 didn't respond to the Letter of Complaint and the complaint was referred to the Financial Ombudsman Service on 25 October 2023. The complaint was assessed by an Investigator who said we couldn't consider the Section 140A complaint as regards Purchase Agreement 1 and Credit Agreement 1 as it had been made too late under the time limits that apply. The investigator said we could consider the rest of the complaint but having considered everything rejected the complaint on its merits.

Mr D and Mrs S disagreed with the Investigator's assessment and asked for an Ombudsman's decision and it was passed to me. I issued a provisional decision explaining why I didn't think the complaint should be upheld the findings from which are set out below.

"I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

However, before I consider the merits of the complaint I first need to be satisfied that we have jurisdiction to consider the complaint.

Credit Agreement 1

Section 140A: did Shawbrook participate in an unfair credit relationship?

The investigator found that the complaint about Credit Agreement 1 wasn't one we could consider as it wasn't within our jurisdiction because it had been made too late. The PR has responded to this and in the main argues that that when considering Credit Agreement 2 it is necessary to consider any unfairness from a related agreement. However, they have also made clear that they don't necessarily agree with what the Investigator about the complaint being made too late.

I agree with the Investigator that the Section 140A complaint about Credit Agreement 1 hasn't been made in time. I will briefly explain why but don't think it is necessary to go into significant detail about this given that when considering the Section 140A complaint about Credit Agreement 2 I need to take into account any unfairness arising from a related agreement and Credit Agreement 1 is a related agreement.

The rules under which we operate are set out in the Handbook of the regulator, the Financial Authority under 'DISP Dispute Resolution: Complaints'. There are various jurisdiction rules including rules about the time limits for bring a complaint. These are set out in DISP 2.8.2R and, in short, these require a complaint to be made no more than six years after the event complained of; or (if later) no more than three years from the date on which the complainant became aware (or ought reasonably to have become aware) that they had cause for complaint.

The event that Mr D and Mrs S are complaining about is that the Lender was party to, and/or perpetuated, an unfair credit relationship which it didn't seek to remedy.

Insofar as there was any unfairness in the relationship, the Lender needed to take action to either remove that unfairness or to mitigate its effects so the relationship didn't remain unfair and this obligation was ongoing throughout the relationship. As such time didn't start to run for making a complaint until the credit relationship came to an end.

The credit relationship ended on 29 July 2015, when the loan under Credit Agreement 1 was consolidated into the loan for Credit Agreement 2. The six year time limit started to run from that point and Mr D and Mrs S therefore had until 29 July 2021 to make a complaint to the business. The complaint made by the PR on behalf of Mr D and Mrs S was sent to the Lender 28 June 2023 and the complaint was referred to our service on 25 October 2023. So their complaint about the Lender being party to an unfair credit relationship has been made too late under the six year time limit.

The three year time limit would still allow us to consider the merits of the complaint if it has been made no more than three years from when Mr D and Mrs S were aware, or ought reasonably to have become aware, they had cause to complain. Put another way, if they were aware, or ought reasonably to have become aware, that they had cause to complain to the Lender before 25 October 2020 their complaint will have been made too late under the three year time limit.

Mr D contacted the Supplier on 29 November 2017 saying he had instructed lawyers and

would be taking the Supplier to court for mis-selling. So, he and Mrs S were aware they had cause to complain to the Supplier at that time. But they also knew that they had only been able to go ahead with the purchase through the finance provided by the Lender which the Supplier had brokered and it was the loan which was the main financial obligation that arose from their purchase.

Given the significant and long-term financial consequences to them as a result of having entered into the Purchase Agreement and Credit Agreement as well as the complexity of the arrangement – involving both holiday rights and an investment element - it is reasonable to have expected them to make enquiries into their rights when they first became aware of issues with their Fractional Club membership. And through such enquiries they ought reasonably to have become aware they could complain to the Lender under Section 140A.

I cannot give a specific date as to when they ought reasonably to have been aware they had to complain but given they were pursuing a claim against the Supplier in 2017 in my view they ought reasonably to have become aware they had cause to complaint about the Lender long before 25 October 2020. In the circumstances I am satisfied that the complaint has been made too late under the three year time limit.

Credit Agreement 2

Section 140A: did Shawbrook participate in an unfair credit relationship?

I am satisfied that we do have jurisdiction to consider the complaint about there being an unfair credit relationship as regards Credit Agreement 2 given the credit agreement is ongoing .

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

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

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

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

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

The PR says, for instance, that the Supplier used high pressure sales and 'wouldn't take no

¹ Credit Agreement 1 is a related agreement as already acknowledged by me.

for an answer'. In their witness statement Mr D's and Mrs S's talk about the extremely noisy environment at the Time of Sale in 2014 and the packed room 'full of noise at the Time of Sale in 2015. But they say nothing that would support a finding that what was said or done by the Supplier made them think they had no choice but to purchase Fractional Club membership when they didn't want to – I note as regards the 2015 purchase they say they thought they made a good investment for example.

They were also given a 14-day cooling off period and they have confirmed they were aware of this in their witness statement. So, if they had entered into the Credit Agreements because they didn't think they had a choice I don't see why they did not cancel their membership during that time. And with all of that being the case, there is insufficient evidence to demonstrate that Mr D and Mrs S made the decision to purchase Fractional Club membership because their ability to exercise that choice was significantly impaired by pressure from the Supplier.

The PR has also referred to the contract terms in the Purchase Agreements being unfair but have not explained how the terms were operated unfairly against Mr D and Mrs S in practice and as I can't see that they were, nor that such terms led to them behaving in a certain way to their 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.

The evidence also suggest the possibility the loans weren't affordable – there is some reference to this in the witness statement and the Supplier also helped Mr D and Mrs S with the first few months loan payments for Credit Agreement 1 which points to there being some financial pressure. However, I asked the PR about this and they have informed me that Mr D and Mrs S are not raising an affordability argument. The PR does then go on to argue that the Lender should have carried out more extensive enquiries into Mr D's and Mrs S's financial position. However, given they are not advancing an argument that the loans weren't affordable there is no reason for me to think that if the Lender had carried out further enquiries this would have led to it concluding the credit agreements weren't affordable.

Overall, therefore, I don't think that Mr D's and Mrs S's credit relationship with the Lender was rendered unfair to them under Section 140A for the reasons set out above and referred to in the Letter of Complaint. But there is another reason, perhaps the main reason, why the PR says the credit relationship with the Lender 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 the prohibition against selling timeshares in that way.

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

The Lender does not dispute, and I am satisfied, that Mr D's and Mrs S'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 Time of Sale – saying, in summary, that a vital element of the offering was that they could sell at the end of the term for a return and that it is Mr D's and Mrs S's case that the most important part of the sales pitch was the promise that Fractional Club membership was an investment.

The term “investment” is not defined in the Timeshare Regulations. But for the purposes of this provisional decision, and by reference to the decided authorities, an investment is a transaction in which money or other property is laid out in the expectation or hope of financial gain or profit.

A share in the Allocated Property clearly constituted an investment as it offered Mr D and Ms S 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 D and Mrs S 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 Time of Sale as an investment in breach of regulation 14(3) of the Timeshare Regulations.

On the one hand, it is clear that the Supplier made efforts to avoid specifically describing membership of the Fractional Club as an ‘investment’ or quantifying to prospective purchasers, such as Mr D and Mrs S, the financial value of their share in the net sales proceeds of the Allocated Property along with the investment considerations, risks and rewards attached to them.

On the other hand, I acknowledge that the Supplier's sales process left open the possibility that the sales representative may have positioned Fractional Club membership as an investment. So, I accept that it's equally possible that Fractional Club membership was marketed and sold to Mr D and Mrs S as an investment in breach of Regulation 14(3) as they have alleged.

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 come to below. 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 relationship between the Lender and Ms M and Ms P have been rendered unfair to them 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 Time of Sale, I now need to consider what impact that breach had on the fairness of the credit relationship between Mr D and Mrs S and the Lender under the Credit Agreement and related Purchase Agreement as the case law on Section 140A makes it clear that regulatory breaches do not automatically create unfairness for the purposes of that provision. Such breaches and their consequences (if there are any) must be considered in the round, rather than in a narrow or technical way.

Indeed, it seems to me that, if I am to conclude that a breach of Regulation 14(3) led to a credit relationship between Mr D and Mrs S and the Lender that was 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 Agreement and the Credit Agreement is an important consideration.

The PR has provided a six page signed witness statement from Mr D and Mrs S dated 27 June 2023, some nine years after the sale 2014 purchase and just short of eight years after the 2015 purchase. 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. The PR has also provided what it has called a 'Factual Statement' also signed by Mr D and Mrs S the day before their witness statement with bullet points referring to Fractional Club membership being sold as an investment.

I am mindful that the witness statement and Factual Statement have been provided after the judgment in 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 & BPS v FOS) was handed down. That judgment confirmed that the marketing of fractional club membership as an investment and this being a motivating factor in the subsequent decision to purchase was a key issue when deciding whether a credit agreement was unfair.

And when assessing testimony, one of the things I need to consider is when it was written, and whether it may have been affected by external factors, such as the widespread publication of the outcome of that case. The PR refers to one of the decisions of our service that was the subject of Shawbrook and BPS v FOS and relies on it in the Letter of Complaint. So, I think that the PR and Mrs D and Mrs S were likely to have been aware of the judgment and even if not they were obviously aware our service had upheld a case similar to theirs on the basis that fractional club membership had been sold as an investment.

In my view there is a clear risk that what is set out in the witness statement and Factual Statement has coloured by the outcome of Shawbrook & BPF v FOS and/or another decision of our service and this affects the weight I can give those statements when deciding if Fractional Club membership was sold as an investment. It is also of note in my view that the Factual Statement, although signed by Mr D and Mrs S, is identified by the PR in the Letter of Complaint as 'their own factual statement – i.e. the PR's statement. It therefore seems likely that the contents of that statement aren't based on Mr D's and Mrs S's actual recollections.

I am reinforced in that view by the fact that the contents of the Factual Statement are not reflected in the six-page witness statement. It concentrates on the Supplier marketing Fractional Club membership as an investment – for example it refers to the Supplier comparing membership to 'bricks and mortar' and that it said it had an 'intrinsic value that would increase in future' and buying membership would be like buying a house – it would increase in value'. It also refers to Mr D and Mrs S thinking it would be a 'good investment as they could pass it on to their daughter'.

This focus on Fractional Club membership being sold as an investment in the Factual Statement when there is only one reference to this in the witness statement to my mind reinforces the view that what has been said has been coloured by the judgment Shawbrook & BPF v FOS and/or another decision of our service. In the circumstances I place no weight on what is set out in the PR's Factual Statement, regardless of this being signed by Mr D and Mrs S.

I also question what if any weight should be given the witness statement as well, given it was created after Shawbrook & BPF v FOS. Even if I was to accept that what Mr D and Mrs S have said in their witness statement is their uncoloured recollections of what happened at the Times of Sale what they have said to my mind doesn't support a conclusion they were motivated to purchase Fractional Club membership because it was an investment.

The Letter of Complaint alleges that it is Mr D's and Mrs S's case that the most important part of the sales pitch was the promise that it was an investment and that if they hadn't been told that they would get their money back or make a profit they wouldn't have purchased. Given this I would have expected this to have been made clear in the witness statement. But in their six pages of testimony they only once make reference to being told they would get something back. This was in relation to the first purchase in 2014. The statement says

"Our contract was to be for 19 years and we were told that at the end of the term we would have the share bought from us, for about £10,000.00. This was spun as a good investment, not just for now but for the future, all these lovely holidays and at the end you even get money back. The rep and the managers were not exact in how much money we would get after the 19 year term of contract, saying "the estimate of your return is approximately £10,000.00".

Even if I accept they were told this there is nothing in what they have said that suggests to me this was a motivating reason for their purchase or that they wouldn't have proceeded but for this reason - as the Letter of Complaint suggests. If that was the case then I would have expected them to have made this clear in what they said - and they haven't done so.

Moreover, they say nothing at all about being motivated to purchase Fractional Club membership in 2015 because it was an investment which I would have expected if that had been important in their decision to purchase at that time. Contrary to what is said in the Letter of Complaint, when their testimony is considered overall it gives a clear impression that they purchased Fractional Club membership for the holidays and nature of the accommodation they could potentially access not because of some gain or profit they thought they might make when membership came to an end.

My finding that the prospect of a gain or profit wasn't a motivating factor in Mr D's and Mrs S's decision to purchase membership 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 D and Mrs S themselves don't persuade me that their purchases were motivated by their share in the Allocated Properties and the possibility of a profit, I don't think a breach of Regulation 14(3) by the Supplier was likely to have been material to the decisions they ultimately made.

On balance, therefore, even if the Supplier had marketed or sold Fractional Club membership as an investment in breach of Regulation 14(3) of the Timeshare Regulations, I am not persuaded that Mr D's and Mrs S's decision to purchase Fractional Club membership at the Times of Sale was 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 relationship between Mr D and Mrs S and the Lender was unfair to them even if the Supplier had breached Regulation 14(3).

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

The PR says that Mr D and Mrs S were not given sufficient information about the ongoing costs of Fractional Club membership. But 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 D and Mrs S 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 2010 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 D and Mrs S 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.

The PR also 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 those payments 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 D and Mrs S in arguing that their credit relationship with the Lender was unfair to them for reasons relating to commission given the facts and circumstances of this complaint.

I haven't seen anything to suggest that the Lender and Supplier were tied to one another contractually or commercially in a way that wasn't properly disclosed to Mr D and Mrs S, 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 D and Mrs S 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 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 failure is itself a reason to find the credit relationship in question unfair to Mr D and Mrs S.

in stark contrast to the facts of Mr Johnson's case, the commission paid by the Lender to the Supplier wasn't high. Based on what I know about the Lender's commercial arrangements this would have been 10% of the loan amount for Credit Agreement 1. So, had they known at the 2014 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 they either wouldn't have understood that or would have otherwise questioned the size of the payment at that time.

After all, Mr D and Mrs S 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 they needed for a timeshare they wanted doesn't strike me as disproportionate. So, I think they would still have taken out the loan to fund their purchase at the 2014 Time of Sale had the amount of commission been disclosed.

As for Credit Agreement 2 as I understand it, the Lender didn't pay the Supplier any commission at the Time of Sale in 2015. 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 the Lender were likely to have led to a sufficiently extreme inequality of knowledge that rendered the credit relationship unfair to Mr D and Mrs S.

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 D and Mrs S 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.

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 D and Mrs S.

Section 140 A 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 D and Mrs S and the Lender under the Credit Agreements and related Purchase Agreements was unfair to them. So, I don't think it is fair or reasonable that I uphold this complaint on that basis.

Commission: The Alternative Grounds of Complaint

While I've found that Mr D's and Mrs S's credit relationship with the Lender wasn't unfair to them 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 D's and Mrs S'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 for Credit Agreement 1 without telling Mr D and Mrs S (i.e., secretly). And the second relates to the Lender's compliance with the regulatory guidance in place at the 2014 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 D and Mrs S 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 them. And while it's possible that the Lender failed to follow the regulatory guidance in place at the 2014 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 Mr D and Mrs S would still have taken out the loan to fund their purchase at the 2014 Time of Sale had there been more adequate disclosure of the commission arrangements that applied at that time."

I gave both parties the opportunity of responding to my PD and providing any further information they wanted me to consider. The Lender responded and said it had nothing further to add and accepted the PD but the PR provided no response. The parties having had the opportunity of providing further information I am 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.

Given the Lender agreed with the PD and the PR provided no response I can see no reason to change the findings I made and the conclusions I reached which form part of the findings in this final decision.

In summary I am not upholding this complaint for the following reasons:

- It's possible Fractional Club membership was marketed and sold as an investment in breach of Regulation 14(3) of the Timeshare Regulations (but I make no finding on this) but even if it was the evidence doesn't support a finding that Mr D and Mrs S were motivated to purchase membership by the prospect of a financial gain and this being the case the credit relationship wasn't rendered unfair for that reason.
- It's possible the Supplier didn't provide the information about costs of membership to Mr D and Mrs S but I cannot see the ongoing costs were applied unfairly in practice and they haven't persuaded me they wouldn't have gone ahead with the purchases if they had been provided with the finer details of the ongoing costs in any event.
- Even if there were information failings about commission and regulatory failings as a result I'm not persuaded that the commission arrangements between the Lender and Supplier were likely to have led to a sufficiently extreme inequality of knowledge that it rendered the credit relationship unfair to Mr D and Mrs S.

My final decision

I don't uphold this complaint for the reasons I have explained above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D and Mrs S to accept or reject my decision before 28 April 2026.

Philip Gibbons
Ombudsman