DRN-6290008

The complaint

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

What happened

Mr S and a Ms P were granted, by a timeshare provider (the 'Supplier'), a promotional holiday for attending one of its presentations. A condition of this promotional holiday was for Mr S and Ms P to attend a further sales presentation whilst on that holiday.

Whilst on the promotional holiday, and having attended the Supplier's sales presentation on 25 February 2019, Mr S purchased membership of a timeshare (the 'Fractional Club') from the Supplier on 28 February 2019 (the 'Time of Sale'). He entered into an agreement with the Supplier to buy 1,300 fractional points at a cost of £11,995 (the 'Purchase Agreement').

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

Mr S paid for his Fractional Club membership by taking finance of £11,995 from Honeycomb Finance Ltd ("HF") in his name (the 'Credit Agreement').

On 20 August 2020 TBL acquired the rights of Mr S' loan from HF.

Mr S – using a professional representative (the 'PR') – wrote to TBL on 1 February 2024 (the 'Letter of Complaint') to complain about:

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

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

Mr S says that the Supplier made pre-contractual misrepresentations at the Time of Sale – namely that the Supplier:

1. Told him that Fractional Club membership was an "investment" *"and could be sold at a later date for a profit"* when that wasn't true.
2. told him that *his "membership would ensure that* [his] *holiday accommodation would be secured for the term of the contract, as* [he] *could book from the many options available"*.

[1] Previously referred to as Tandem Personal Loans Ltd

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

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

The Letter of Complaint set out several reasons why Mr S says that the credit relationship between him and TBL was unfair to him under Section 140A of the CCA. In summary, they include the following:

1. Fractional Club membership was marketed and sold to him as an investment in breach of regulation 14(3) of the Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010 (the 'Timeshare Regulations').
2. The contractual terms setting out (i) the duration of his Fractional Club membership and/or (ii) the obligation to pay annual management charges for the duration of his membership were unfair contract terms under the Unfair Terms in Consumer Contracts Regulations 1999 (the 'UTCCR').
3. He was pressured into purchasing Fractional Club membership by the Supplier.
4. The Supplier's sales presentation at the Time of Sale included misleading actions and/or misleading omissions under the Consumer Protection from Unfair Trading Regulations 2008 (the 'CPUT Regulations').
5. The Supplier failed to provide sufficient information in relation to the Fractional Club's ongoing costs.

TBL dealt with Mr S' concerns as a complaint and issued its final response letter on 13 March 2024, rejecting it on every ground.

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

The Investigator thought that the Supplier had marketed and sold Fractional Club membership as an investment to Mr S at the Time of Sale in breach of Regulation 14(3) of the Timeshare Regulations. And given the impact of that breach on his purchasing decision, the Investigator concluded that the credit relationship between TBL and Mr S was rendered unfair to him for the purposes of section 140A of the CCA.

TBL disagreed with the Investigator's assessment and asked for an Ombudsman's decision – which is why it was passed to me.

I issued my provisional decision on 30 July 2025. And, in summary, I made the following provisional findings (which form part of this final decision):

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I've taken into account relevant law and regulations, regulators' rules, guidance and standards and codes of practice, and (where appropriate), what I consider to have been good industry practice at the relevant time.

Where necessary, I've made my decision on the balance of probabilities – in other words, on what I think is more likely than not to have happened given the available evidence and the wider circumstances.

…

After careful consideration, I'm currently minded not to uphold Mr S' complaint. Before I explain why, I want to make it clear that my role as an ombudsman doesn't mean I need to address every single point that has been made to date. Rather, it's to decide what's fair and reasonable in the circumstances of this complaint. If I haven't commented on, or referred to, something that either party has said, that doesn't mean I haven't considered it.

There are various aspects to Mr S' complaint. These include the allegations of misrepresentation (and possibly of breach of contract) in respect of the Fractional Club membership, and the suggestion that TBL ought to have accepted and met his claim under Section 75 of the CCA. I'll deal with those concerns first.

Section 75 of the CCA: the Supplier's misrepresentations at the Time of Sale and possible breach of contract[2]

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 S at the Time of Sale or has breached its contract with him, that might give rise to a potential joint and several liability on the part of TBL. Equally, of course, if the Supplier has a defence to such a claim, that defence is also available to TBL.

But I'm not inclined to find that the conditions necessary to bring a section 75 claim are met in this case.

Section 75 enables a claim to be brought against the creditor. At the time the Credit Agreement was made, the creditor was HF. While HF assigned its loan book to TBL, it didn't necessarily follow that all of 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[3] 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.

I'm further conscious of the conclusions reached by the High Court in *Jones v Link Financial Ltd* [2012] EWHC 2402 (*"Jones"*), which drew a distinction between pre-assignment liabilities such as might arise under section 75 and those statutory duties under the CCA that the assignee was required to perform in order to enforce its assigned rights.[4]

That's not to say that a claim can't be made along the lines outlined by Mr S. Rather, both *Goode and Jones* highlight the inherent difficulty Mr S might face in succeeding with that claim. And with this in mind, I can't say that TBL acted unfairly or unreasonably towards Mr S when it declined to pay him compensation for the claim he says it was liable for under section 75.

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[2] The PR's submissions contain some comments that are capable of interpretation as allegations of a breach of contract.

[3] 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)

[4] Jones (paras 33-34)

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

I've explained why I'm not persuaded Mr S' relationship with TBL could lead to a successful section 75 claim and outcome in this complaint. But Mr S also makes arguments that either say or infer that the credit relationship between him and TBL 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 he's mentioned.

Mr S' loan from HF is one that's regulated by the CCA. TBL acquired and continued to administer the loan when Mr S made his complaint, so section 140A of the CCA is relevant law. It isn't subject to the same difficulty as his section 75 claim[5]. So determining what's fair and reasonable in all the circumstances of the complaint includes considering whether the credit relationship between Mr S and TBL was unfair.

Under section 140A, a debtor-creditor relationship can be found to have been or be unfair to the debtor because of one or more of the following: the terms of the credit agreement itself; how the creditor exercised or enforced its rights under the agreement; and any other thing done (or not done) by, or on behalf of, the creditor (either before or after the making of the agreement or any related agreement).[6]

Such a finding may also be based on the terms of any related agreement (which here, includes the Purchase Agreement) and on anything done or not done by the supplier on the creditor's behalf before the making of the credit agreement or any related agreement.

I see no great difficulty with the position that the Supplier is deemed agent of HF for the purpose of the pre-contractual negotiations, nor with the possibility referenced in Goode that the operation of sections 140A through 140C effectively extend the deemed agent provision to TBL after the loan was assigned to it.

With this in mind I've considered the entirety of the credit relationship between Mr S and TBL along with all of the circumstances of the complaint. Having done so, I don't think the credit relationship between him was likely to have been rendered unfair for section 140A purposes.

The PR (on behalf of Mr S) complained about TBL being party to an unfair credit relationship for several reasons, which I've set out in this decision. It included in its submissions several examples in support of the allegation that the Supplier misled Mr S, either by misrepresentation[7] or by omission, and that the Supplier carried on unfair commercial practices (contrary to the CPUT Regulations).

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

[6] Section 140A(1) of the CCA

[7] A misrepresentation is a false statement of fact (or law) that induces a party to contract.

Despite the breadth of the unfair relationship test under section 140A, a credit relationship isn't rendered unfair to a debtor simply because of a breach of a legal or equitable duty.

Rather, the protection afforded to debtors by section 140A is the consequence of all of the relevant facts. As the Supreme Court said in *Plevin* (at paragraph 17):

> *"Section 140A…does not impose any obligation and is not concerned with the question whether the creditor or anyone else is in breach of a duty. It is concerned with…whether the creditor's relationship with the debtor was unfair."*

The PR submits that the Supplier misled Mr S and carried on unfair commercial practices which were prohibited under the CPUT Regulations. But given the limited evidence in this complaint, I'm not persuaded that anything done or not done by the Supplier was prohibited under the CPUT Regulations.

Mr S says he was pressured by the Supplier into purchasing Fractional Club membership at the Time of Sale. He says the sales process lasted four hours and was highly pressured.

However, Mr S and the PR have said little about what the Supplier actually said and/or did during the sales presentation that made Mr S feel as if he had no choice other than to purchase the Fractional Club membership when he didn't want to. Neither the overall time Mr S spent with the Supplier during the sales process nor the number of documents he needed to read and sign appear to me to be particularly excessive, given the nature of the purchase he was making.

Mr S was also given a 14-day cooling off period. I've seen no indication that he attempted to cancel his membership during that time, or anything else that suggests that he felt pressured or that he didn't have time to think about his decision.

Taking all of this into account, I don't propose to reach a finding that the available evidence demonstrates that Mr S made the decision to purchase Fractional Club membership because his ability to exercise that choice was significantly impaired by undue coercion or pressure from the Supplier.

The PR submitted that The Supplier failed to provide sufficient information to Mr S in relation to the Fractional Club's ongoing costs.

However, it's my understanding that the various documents Mr S signed explain that purchasers would be required to pay an annual management charge and this would be payable whether weeks were used or not. It also explained that the charges would be distributed among the fractional owners fairly and equitably according to the number of weekly periods each owner was entitled to use each year. And, that charges would be subject to increase or decrease according to the costs of managing the Fractional Club and would be due annually in advance each year.

Mr S also hasn't explained what information he was given about this at the Time of Sale, and why this was insufficient. So, I'm not persuaded this caused an unfairness in the credit relationship that requires a remedy.

The PR also submitted that the contractual terms setting out (i) the duration of his Fractional Club membership and/or (ii) the obligation to pay annual management charges for the duration of his membership were unfair contract terms under the UTCCR, although the relevant legislation in this respect is the CRA.

One of the main aims of the Timeshare Regulations and the CRA was to enable consumers to understand the financial implications of their purchase so that they were/are put in the position to make an informed decision. And if a supplier's disclosure and/or the terms of a contract didn't recognise and reflect that aim, and the consumer ultimately lost out or almost certainly stands to lose out from having entered into a contract whose financial implications they didn't fully understand at the time of contracting, that may lead to the Timeshare Regulations and the CRA being breached, and, potentially the credit agreement being found to be unfair under Section 140A of the CCA.

However, as I've said before, the Supreme Court made it clear in *Plevin* that it doesn't automatically follow that regulatory breaches create unfairness for the purposes of Section 140A of the CCA. The extent to which such mistakes render a credit relationship unfair must also be determined according to their impact on the complainant.

I've read the relevant terms relating to the Fractional Club membership, the management charges and other costs, and the potential consequences for Mr S of not paying these. I've not analysed the position in detail regarding whether any of these terms were unfair under the CRA and I make no formal findings on this, but I think it's possible that terms which could lead to Mr S forfeiting his membership and Fractional Club rights for non-payment of management fees had the potential to operate in an unfair way.

But given the facts and circumstances of this complaint, I'm not persuaded that the Supplier's alleged breaches of the CRA are likely to have prejudiced Mr S' purchasing decision at the Time of Sale and rendered his credit relationship with TBL unfair to him for the purposes of section 140A of the CCA. I say this because although Mr S' membership might be currently suspended for non-payment of management charges it's my understanding that on payment of these membership is fully available for his use.

I will now turn to the PR's submission that Fractional Club membership was marketed and sold to Mr S as an investment in breach of regulation 14(3) of the Timeshare Regulations.

I accept that it's possible that the Supplier marketed and sold Fractional Club membership to Mr S as an investment. Regulation 14(3) of the Timeshare Regulations prohibited the Supplier from marketing or selling membership of the Fractional Club as an investment. The provision at the Time of Sale said that *"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."* I've thought about the submitted evidence in this respect, and what, more likely than not, prompted Mr S to enter into the Purchase Agreement.[8]

Unfortunately the PR's Letter of Complaint is somewhat generic in nature, and I've not found it to be of much assistance in this regard. Equally, I'm of a similar view when it comes to Mr S' statement.

I accept that Mr S' statement was provided to TBL by the PR at the outset. But equally I'm mindful this statement was provided following the outcome in *Shawbrook & BPF v FOS*, so to me there is a real risk this has affected Mr S' recollection of what happened. Further, Mr S says in this statement that he was approached whilst on holiday (by the Supplier) to attend a presentation about *"holiday package*[s]*"* when it's my understanding that attending a presentation was a condition of the holiday Mr S was on and so the type of approach by the Supplier Mr S outlines wouldn't have been necessary.

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[8] I'm mindful here of what HHJ Waksman QC (as he then was) and HHJ Worster respectively had to say in Carney (paragraph 51) and Kerrigan (paragraphs 213 and 214) on causation.

But in any event I don't get the impression from Mr S' statement that the investment potential of the product played an important part in his decision to purchase the Fractional Club membership. The statement is more focused, in my view, on what Mr S says he was told, or led to believe, by the Supplier about the holiday benefits of membership.

This appears to be supported by notes taken by the Supplier over the course of Mr S' membership. It appears, for example, that at the Time of Sale Mr S said he liked to holiday and was particularly interested in last minute deals, mini breaks and free upgrades. It also appears that Mr S called the Supplier in October 2020, 18 months into his membership, to enquire about a particular resort and to complain about a previous holiday.

The above, together with the absence of any specific detail from Mr S about precisely what he was told at the Time of Sale, I'm simply not persuaded that his purchase decision was prompted by the Supplier marketing and selling membership to him as an investment in breach of Regulation 14(3) of the Timeshare Regulations.

In conclusion, then, given all of the facts and circumstances of this complaint, I don't think the credit relationship between TBL and Mr S was unfair to him for the purposes of Section 140A. So I don't propose to uphold this aspect of the complaint on that basis.

I then emailed the PR, on 2 March 2026, to address what I understood was Mr S' commission complaint. Under cover of that email I said:

It's my understanding that you are saying 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 you 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 didn't 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, isn't 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 S in arguing that his credit relationship with the Lender was unfair to him for reasons relating to commission given the facts and circumstances of this complaint.

I haven't seen anything to suggest that the Lender and Supplier were tied to one another contractually or commercially in a way that wasn't properly disclosed to Mr 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 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 Time of Sale insofar as it was relevant to disclosing the commission arrangements between them.

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

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 Agreement that Mr S entered into wasn't high. At £299.87, it was only 2.5% of the amount borrowed and even less than that (2.32%) as a proportion of the charge for credit. So, had he known at the Time of Sale that the Supplier was going to be paid a flat rate of commission at that level, I'm not persuaded that he either wouldn't have understood that or would have otherwise questioned the size of the payment at that time. After all, Mr 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 he needed for a timeshare he wanted doesn't strike me as disproportionate. So, I think he would still have taken out the loan to fund his purchase at the Time of Sale had the amount of commission been disclosed.

What's more, based on what I've seen, 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 S but as the supplier of contractual rights he obtained under the Purchase Agreement, the transaction doesn't strike me as one with features that suggest the Supplier had an obligation of 'loyalty' to him when arranging the Credit Agreement and thus a fiduciary duty.

Overall, therefore, I'm not 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 S.

Section 140A: Conclusion

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

Commission: The Alternative Grounds of Complaint

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

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

However, for the reasons I set out above, I'm not persuaded that the Supplier – when acting as credit broker – owed Mr 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 him. And while it's possible that the Lender failed to follow the regulatory guidance in place at the Time of Sale insofar as it was relevant to disclosing the commission arrangements between it and the Supplier, I don't think any such failure on the Lender's part is itself a reason to uphold this complaint because, for the reasons I also set out above, I think he would still have taken out the loan to fund his purchase at the Time of Sale had there been more adequate disclosure of the commission arrangements that applied at that time.

So, in summary, I wasn't persuaded by any of the arguments put forward for why the credit relationship between Mr S and TBL was unfair to him under Section 140A of the CCA. And I couldn't see any other reason why it would be fair or reasonable to direct TBL to compensate Mr S – all of which led me to provisionally conclude that there was no basis on which to uphold the complaint.

TBL acknowledged receipt of my provisional decision and said it would wait my final decision in due course.

The PR disagreed with my overall conclusion. While primarily concerned with the suggestion that Mr S' Fractional Club membership had been marketed and sold as an investment in contravention of a prohibition on selling timeshares in that way, it included allegations of misrepresentation on the basis that Mr S was told by the Supplier at the Time of Sale that:

(1) Fractional Club membership was an investment;
(2) The Allocated Property could be sold at a later date for a profit.

The PR also repeated its concerns about the pressure Mr S was put under by the Supplier at the Time of Sale and payment of commission to the Supplier by the HF – albeit with a focus on the Supreme Court's judgment in *Hopcraft v Close Brothers Limited; Johnson v FirstRand Bank Limited; Wrench v FirstRand Bank Limited* [2025] UKSC 33 ('*Johnson'*).

As a result, the complaint was passed back to me for further thought and my Final Decision.

The Legal and Regulatory Context

The legal and regulatory context that I think is relevant to this complaint has been shared in several hundred published decisions on very similar complaints, as well as in previous correspondence with the parties. So, there's no need for me to set this out again in detail here. I simply remind the parties that our rules[9] say that in considering what is fair and reasonable in all the circumstances of the complaint, I will take into account: relevant (i) law and regulations; (ii) regulators' rules, guidance and standards; and (iii) codes of practice; and (when appropriate), what I consider to have been good industry practice at the relevant time.

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.

And having done that afresh, I'm not persuaded to depart from my provisional decision for reasons I'll now explain.

Before I do, I want to make it clear that I recognise that this complaint, when originally made, was wide ranging and made on a number of different grounds - including:

(1) Misrepresentations by the Supplier at the Time of Sale and a possible breach of contract giving Mr S a claim against TBL under Section 75 of the CCA, which TBL failed to accept and pay.
(2) TBL being party to an unfair credit relationship under the Credit Agreement and related Purchase Agreement for the purposes of Section 140A of the CCA.

However, as I haven't been provided with any new arguments and/or evidence to consider in relation to (1), the PR's response to my provisional decision relating in the main to (2), I see no reason to change or add to my conclusions (as set out in the summary of my provisional decision above) in relation to (1).

[9] Specifically Rule 3.6.4 in the Dispute Resolution Rules found in the Financial Conduct Authority's Handbook for Rules and Guidance.

Indeed, as I said in my provisional decision, my role as an Ombudsman is to decide what's fair and reasonable in the circumstances of this complaint – rather than address every single point that's been made. And with that being the case, while I've read all of the PR's submissions in full, if I haven't commented on, or referred to, something that either party has said, that doesn't mean I haven't considered it.

What's more, it's important to make the point that, in contrast to what might happen in court, neither side to this complaint has a burden of proof that it must discharge. After all, the jurisdiction under which I'm deciding this complaint is inquisitorial rather than adversarial – which means that my findings are made, on the balance of probabilities, in light of the evidence and/or arguments from both sides.

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

It was argued by the PR, when this complaint was first made, that the Supplier misrepresented Fractional Club membership at the Time of the Sale. The reasons for this aspect of this complaint at that time were addressed in my provisional decision. And I see no reason to change or add to those. But in in response to my provisional decision, the PR argues that in the absence of any valuation of the property, title deeds, a deed of trust, management documents, a plan of the property, any disclosure regarding the total shares sold, or verifiable mechanism to prove that the Allocated Property holds any residual value or will actually be sold means the following constituted misrepresentations.

(1) Mr S was buying part ownership of a physical property;
(2) Fractional Club membership was an investment;
(3) The Allocated Property would be sold; and
(4) Mr S would receive a share of the net sales proceeds of sale when the Allocated Property is sold that would amount to more than what he paid for membership.

The PR takes that view because it says the evidence suggests that TBL hasn't provided any evidence that the Allocated Property exists or that it will sell in the future (making it unlikely that Mr S will receive anything from his share in it) and, by its own calculations, given the initial and ongoing costs of Fractional Club membership, it was never possible to make a profit from the sale of the Allocated Property.

The law relating to misrepresentation is a combination of the common law, equity and statute – though, as I understand it, the Misrepresentation Act 1967 didn't alter the rules as to what constitutes an effective misrepresentation. Summarising the relevant pages in *Chitty on Contracts*, a material and actionable misrepresentation is an untrue statement of existing fact or law made by one party (or his agent for the purposes of passing on the representation, acting within the scope of his authority) to another party that induced that party to enter into a contract.

However, a mere statement of opinion, rather than fact or law, which proves to be unfounded, isn't a misrepresentation unless the opinion amounts to a statement of fact and it can be proved that the person who gave it didn't hold it or couldn't reasonably have held it. It also needs to be shown that the other party understood and relied on the implied factual misrepresentation.

Telling prospective members that they were investing their money because they were buying a fraction or share of one of the Supplier's properties wasn't untrue – nor was it untrue to tell prospective members that they would receive *some* money when the allocated property is sold.

After all, Mr S' share in the Allocated Property clearly constituted an investment as it offered him the prospect of a financial return – whether or not, like all investments, that was more than what he first put into it.

But as the PR knows, while the term "investment" isn't defined in the Timeshare Regulations, it was agreed by the parties in *Shawbrook & BPF v FOS* that, by reference to the decided authorities, "*an investment is a transaction in which money or other property is laid out in the expectation or hope of financial gain or profit*" (see paragraph 56).

Yet, contrary to what the PR says, none of the contractual paperwork made any promises that a profit might be made. The PR argues that Mr S' Fractional Rights Certificate, for instance, made a clear and unambiguous "investment promise" because it indicated that, upon the sale of the Allocated Property, he would receive 1.21% of the net sales proceeds. However, nowhere did the Certificate imply let alone suggest that 1.21% would be worth more in real terms in the future than at the Time of Sale.

As I said in my provisional decision, the Supplier's training material left open the possibility that the sales representative may have positioned Fractional Club membership as an investment. So, I accept that it's possible that Fractional Club membership was marketed and sold to Mr S as an investment orally.

Mr S' says little about what was said, by whom and in what circumstances for the purposes of determining whether representations by the Supplier amounted to false statements of existing fact rather than expressions of honestly held opinions about the likely value of the Allocated Property in the future. And while the PR's own calculations might cast some doubt over the likelihood of the Allocated Property being sold at a profit given the initial and ongoing costs of it to Mr S, there isn't enough evidence to persuade me that the relevant sales representative(s) would have carried out that sort of calculation at the Time of Sale or would otherwise have had information that would indicate that they knew or ought reasonably to have known at the time that any such representations weren't true.

And while the PR might question the exact legal mechanism used to give prospective members an interest in allocated properties, that doesn't change the fact that the shares of members (like Mr S) were clearly the purchase of a share of the net sale proceeds of a specific property in a specific resort.

Notwithstanding that in my provisional decision I found that the conditions necessary to bring a section 75 claim aren't met in this case, I'm not persuaded by the allegations of misrepresentation from the PR. And with that being the case, they too aren't reasons to uphold this complaint and direct TBL to compensate Mr S.

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

I've already explained why, in light of the PR's latest allegations of misrepresentation, I'm not persuaded that Fractional Club membership was actionably misrepresented by the Supplier at the Time of Sale. And it's for those reasons that I don't think the credit relationship between Mr S and TBL was rendered unfair to him on the basis that membership had been misrepresented.

However, there are, of course, other reasons for why the PR argues that the credit relationship in question was unfair. But having reconsidered the entirety of that relationship along with everything that has now been said and/or provided by both sides, I still don't think the credit relationship between Mr S and TBL was likely to have been rendered unfair to him for the purposes of Section 140A. When coming to that conclusion, I've looked again 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 inherent probabilities of the sale given its circumstances; and, when relevant
5. Any existing unfairness from a related credit agreement.

I've also reconsidered any commercial (including commission) arrangements between HF and the Supplier at the Time of Sale and the disclosure of those arrangements.

The PR continues to argue that Mr S was pressured by the Supplier into purchasing Fractional Club membership at the Time of Sale.

However, as neither the PR nor Mr S have submitted any new evidence to further either of the arguments above, it's for the same reasons I gave in my provisional decision that I don't think either of them render his credit relationship with TBL unfair to him for the purposes of Section 140A.

But I'll turn now to what continues to be the main reason for the PR's assertion that the credit relationship in question was unfair.

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

As I said in my provisional decision, there is competing evidence in this complaint as to whether the 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.

I acknowledged that it was possible that Fractional Club membership was marketed and sold to Mr S as an investment in breach of Regulation 14(3). A view I still hold.

But I also thought and still think that it isn't necessary to make a formal finding on that particular issue for the purposes of my determination on this complaint because a breach of Regulation 14(3) by the Supplier isn't itself determinative of the outcome in this complaint unless the impact of such a breach suggested otherwise.

The PR disagrees with that and cites the judgment of Mrs Justice Collins Rice in *Shawbrook & BPF v FOS* in support – saying that she found that the selling of a timeshare as an investment (i.e. in a breach of Regulation 14(3) of the Timeshare Regulations) was, itself, sufficient to create an unfair credit relationship.

However, on my reading of *Shawbrook & BPF v FOS*, Mrs Justice Collins Rice didn't find that a breach of Regulation14(3) of the Timeshare Regulations was *"causative of the legal relations entered into".* She recognised that such a breach was *"conduct that knocks away the central consumer protection safeguard"*, but she went on to say that it was the ombudsmen behind the two reviewed decisions who found that such a breach was, given the facts and circumstances of the relevant complaints, causative of the consumers in question purchasing their timeshares and taking out loans to do so.

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

I'm also mindful of what HHJ Waksman QC (as he then was) and HHJ Worster had to say in *Carney v NM Rothschild & Sons Ltd* [2018] EWHC 958 ('*Carney*') and *Kerrigan v Elevate Credit International Ltd* [2020] EWHC 2169 (Comm) ('*Kerrigan*') (respectively) on causation.

In *Carney*, HHJ Waksman QC said the following in paragraph 51:

"[…] In cases of wrong advice and misrepresentation, it would be odd if any relief could be considered if they did not have at least some material impact on the debtor when deciding whether or not to enter the agreement. […] in a case like the one before me, if in fact the debtors would have entered into the agreement in any event, this must surely count against a finding of unfair relationship under s140A. […]"

And in *Kerrigan*, HHJ Worster said this in paragraphs 213 and 214:

"[…] The terms of section 140A(1) CCA do not impose a requirement of "causation" in the sense that the debtor must show that a breach caused a loss for an award of substantial damages to be made. The focus is on the unfairness of the relationship, and the court's approach to the granting of relief is informed by that, rather than by a demonstration that a particular act caused a particular loss. Section 140A(1) provides only that the court ***may*** *make an order* ***if*** *it determines that the relationship is unfair to the debtor. […]*

[…] There is a link between (i) the failings of the creditor which lead to the unfairness in the relationship, (ii) the unfairness itself, and (iii) the relief. It is not to be analysed in the sort of linear terms which arise when considering causation proper. The court is to have regard to all the relevant circumstances when determining whether the relationship is unfair, and the same sort of approach applies when considering what relief is required to remedy that unfairness. […]"

So, it still seems to me that, if I'm to conclude that a breach of Regulation 14(3) led to a credit relationship between Mr S and TBL that was unfair to him and warranted relief as a result, whether the Supplier's breach of Regulation 14(3) led him to enter into the Purchase Agreement and the Credit Agreement is an important consideration.

Indeed, doing that accords with common sense, for if events would have unfolded in the same way whether or not such a pre-contractual breach had occurred, it would be difficult to attribute any particular importance to the breach when deciding whether an unfair debtor-creditor relationship ensued, or whether a remedy is appropriate.

If there had been a breach of Regulation 14(3), would it have rendered the credit relationship between Mr S and TBL unfair to him?

Having found that it was possible that the Supplier breached Regulation 14(3) of the Timeshare Regulations at the Time of Sale, I've considered (as I did in my provisional decision) what impact that breach (if there was one) had on the fairness of the credit relationship between Mr S and TBL under the Credit Agreement and related Purchase Agreement.

And on my re-reading of the evidence before me, I'm still not persuaded that the prospect of a financial gain from Fractional Club membership was an important and motivating factor when Mr S decided to go ahead with his purchase to the extent that he would have made an entirely different purchasing decision had there not been a breach of Regulation 14(3).

Based on documentation provided by the PR it wasn't until 28 November 2023 that Mr S appointed it to represent him. Therefore his testimony would have been produced, in my view and on the balance of probabilities, on or after this date. Therefore I remain of the view that there is a real risk that Mr S' recollections may have been affected by the outcome in *Shawbrook & BPF v FOS*.

Notwithstanding the above I've reviewed Mr S' testimony afresh. But having done so I remain of the view that it lacks 'specifics' and is more focused on what Mr S says he was told, or led to believe, by the Supplier about the holiday benefits of membership, a view supported by the Supplier's sales notes. And in respect of the latter I see no reason why I can't place weight on the Supplier's sales notes or that I've given them more weight than they warrant.

As covered above the PR also argues that the cost of Fractional Club membership (either taking into account the loan interest and/or the management fees over the membership term) proves that Fractional Club membership must have been sold as an investment, as no rational consumer would make the purchase unless promised a substantial financial return.

But I don't think that is an inevitable conclusion, or even a fair and reasonable one in this case. Mr S purchased 1,300 Fractional Points and it isn't inconceivable that a rational consumer might think those holiday rights made the purchase worthwhile even without the possibility of some money back at the end.

I also note that the PR suggests that I relied heavily on clause 6 of the Members Declaration, which states *"the purchase is for the primary purpose of holidays and not for direct purposes of a trade in"* and that I said the Supplier made no prediction as to the future value of the fraction. But I disagree that I did either.

Finally, I would add that having reconsidered the PR's Letter of Complaint I remain of the view that it's very generic in nature and is of very little assistance, if any, to my consideration of this complaint.

On balance, therefore, for the reasons I've set out above, I don't think the credit relationship between Mr S and TBL was unfair to him even if the Supplier had breached Regulation 14(3).

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

As I've already said, I set out my thoughts in relation to the implications of the Supreme Court's judgment in *Hopcraft, Johnson and Wrench* for this complaint on 2 March 2026. I remain satisfied that TBL has provided me with sufficient information to reach a conclusion about the commercial (including commission) arrangements with the Supplier. I've seen nothing in this case that leads me to think that the information in question is inaccurate. And while I recognise that the PR might disagree with the thoughts I shared on 2 March 2026, it hasn't offered any evidence and/or arguments that lead me to think that (1) the factors referenced by the Supreme Court have a bearing on the outcome of this complaint given its circumstances or (2) there are any other reasons why the commercial (including commission) arrangements between the Supplier and HF rendered the credit relationship between TBL and Mr S under the Credit Agreement and related Purchase Agreement unfair for the purposes of Section 140A.

In response to my provisional decision, the PR also says the Supplier failed to provide Mr S with information on, amongst other things, the market value of the Allocated Property and title deeds in breach of the CPUT and Timeshare Regulations.

However, it hasn't provided any authority for the suggestion the Supplier had to provide Mr S with information on the title deeds of the Allocated Property. What's more, when it comes to the market value of the Allocated Property, I would draw the PR's attention to what Mrs Justice Collins Rice said in paragraphs 106 and 110 of her judgment in *Shawbrook & BPF v FOS:*

"Both ombudsmen rely on the reference in Sch.1 to 'exact nature and content of the rights' as being the basis for perceiving a legal obligation to provide 'value' information. But first, having regard to the high level of specificity in the Schedule, ***it is obvious that 'value' information is nowhere specified as such. And second, 'exact nature and content of the rights' is clearly intended, in context, to be a fair and objective identification and description of those rights. 'Value' information may possibly be context for, or commentary on, those rights, but the 'exact nature and content of rights' is something different from information which may (or may not) be relevant to how much they might be worth, now or in the future.****"*

"I do not, and do not need to, go so far as to infer from the Regulations a legal prohibition on the provision of valuation information. ***My conclusion is that there is no legal obligation, derivable from Reg.12 of the Timeshare Regulations, to provide it,*** *and that the ombudsmen's solution is, in its own terms, distinctly problematic for the regulatory framework. It remains my view that the principal legal consumer-protection control over buying and selling fractional ownership timeshares is the Reg.14(3) prohibition. That provision alone makes it hard enough to market a timeshare product containing a bare interest in the proceeds of the deferred sale of real property lawfully, without inviting the fleshing out of the law as positively demanding investor-protection information obligations at the same time."*

(My emphasis added)

In any event, as I've already indicated, the case law on Section 140A makes it clear that it doesn't 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.

So, even if it could be said that the Supplier failed to give Mr S sufficient information, in good time, in order to satisfy the requirements of the CPUT and Timeshare Regulations for some of the reasons the PR gives, neither Mr S nor the PR have persuaded me that Mr S was deprived of information that would have led them to make a different purchasing decision at the Time of Sale when I've already found that the prospect of a financial gain from the Allocated Property wasn't an important and motivating factor behind his purchase. And with that being the case, even if there were information failings (which I make no formal finding on), I can't see why that could be said to have rendered the credit relationship in question unfair to him.

Conclusion

Having adopted my provisional findings, and reconsidered the facts and circumstances of this complaint, I still I don't think TBL acted unfairly or unreasonably when it dealt with Mr S' section 75 claim. I'm still not persuaded that TBL was party to a credit relationship with Mr S that was unfair to him for the purposes of section 140A of the CCA. And having taken everything into account, I see no other reason why it would be fair or reasonable for me to direct TBL to compensate Mr S.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 13 May 2026.

Peter Cook
Ombudsman