DRN-6305530

Financial Ombudsman Service

**The complaint**

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

**What happened**

I issued a provisional decision on Mr and Mrs D's complaint on 2 April 2026, in which I set out the background to this matter, and my provisional findings. A copy of that provisional decision is appended to, and forms part of, this final decision, so it's not necessary for me to go over all the details again. But to summarise:

- Mr and Mrs D had been members of a timeshare provider (the "Supplier") since 2002. On 30 May 2013 (the "Time of Sale"), they entered an agreement with the Supplier to trade in 12,000 points they held in the Supplier's "European Collection", for 14,000 points in the Supplier's "Fractional Club". After the trade-in, there was a balance to pay of £11,520, which was financed by a loan of the same amount from the Lender. Mr and Mrs D retained 3,000 points in the European Collection. The Fractional Club product was a type of asset-backed timeshare that entitled Mr and Mrs D to a share in the net sale proceeds of a specific named property (the "Allocated Property") at the end of their membership.

- In March 2018, Mr and Mrs D complained to the Lender via a professional representative ("PR"). This was, in essence, about alleged mis-selling of the timeshare and the related loan. Their concerns included that the Supplier had made misrepresentations to them and was (or would be) in breach of contract with them, giving them a claim against the Lender under Section 75 of the CCA; and that various other wrongful acts or omissions by either the Lender or Supplier had rendered their credit relationship with the Lender unfair to them within the meaning of Section 140A of the CCA.

- The Lender rejected the complaint, which was subsequently referred to the Financial Ombudsman Service. The complaint was added to at various points by PR, prior to me issuing a provisional decision.

In my provisional decision, I said I didn't think the complaint should be upheld. The reasons for this can be found in the appended document, but to summarise again:

- The Lender had not been unfair or unreasonable to decline Mr and Mrs D's Section 75 claim for misrepresentation because:
    - I considered there was insufficient persuasive evidence the Supplier had falsely claimed that purchasing Fractional Club membership was the only way Mr and Mrs D could leave their European Collection membership. I was also not convinced that, at the Time of Sale, Mr and Mrs D would in fact have been able to leave their European Collection membership without further charge.

- I considered there was also insufficient persuasive evidence the Supplier had falsely told Mr and Mrs D that their Fractional Club membership was guaranteed to come to an end on a specific date. I observed that the paperwork dating to the Time of Sale said only that the Allocated Property would be marketed for sale after a certain number of years, and I wasn't persuaded Mr and Mrs D had been told anything different to this.

- I thought an allegation that Mr and Mrs D were falsely told they were becoming members of an exclusive club, was rather vague in nature. I thought there was insufficient evidence a false statement of fact had been made, noting the sales and marketing materials didn't say or suggest the Supplier's resorts could only be used by club members. Furthermore, it seemed that some membership benefits were exclusive to members, so to this extent it was not false to describe it as "exclusive".

- I didn't think it would have been a misrepresentation for the Supplier to have told Mr and Mrs D that they could use the Fractional Club membership to take holidays. I noted they had been able to take 63 nights of holiday in a little over three years of membership, so it clearly would not have been a false to say that the product could be used to take holidays.

- The Lender had not been unfair or unreasonable in declining Mr and Mrs D's Section 75 claim for breach of contract because:

  - The breach of contract PR had referred to was a feared failure by the Supplier to sell the Allocated Property as agreed after 15 years. This was a feared *future* breach that may never come to pass, so a claim for breach of contract was premature. I also noted that a delay in the sale of the Allocated Property would not necessarily be a breach of contract, given the lack of contractual guarantees regarding the sale date.

- The Lender had not participated in a credit relationship with Mr and Mrs D that was unfair to them because:

  - While unfair terms within the timeshare purchase agreement had been referred to by PR, I couldn't see that these terms had been operated in an unfair way with respect to Mr and Mrs D or caused them to behave to their detriment.

  - Regardless of whether or not the Lender had carried out appropriate checks before agreeing to lend to Mr and Mrs D, there was a lack of evidence the loan had been unaffordable for them at the time, which was something that would need to have been demonstrated to show that such a failing had led to an unfair credit relationship.

  - While it had been argued that there was something untoward about the timeshare purchase agreement and the loan agreement having been arranged on the same day, I failed to see how this had led to an unfair credit relationship. I noted both agreements had come with their own cooling off or withdrawal periods.

  - I couldn't see how the employment status of the Supplier's sales representatives was relevant to the question of the fairness of the credit relationship, as suggested by PR.

- While a flat rate commission had been paid to the Supplier by the Lender for arranging the loan, there was nothing about the amount of the commission, its proportion of the loan or the cost of the loan, or the broader commission arrangements between the Supplier and Lender, that led me to believe that this had rendered the credit relationship between Mr and Mrs D, and the Lender, unfair to them. I also couldn't see that the commission arrangements would lead to any free-standing causes of complaint relating to commission being upheld.

- A later witness statement from Mr and Mrs D had alleged the Supplier had sold the Fractional Club membership to them as an investment, and I noted it was prohibited to sell timeshares in that way. However, I was not convinced the Supplier had sold the timeshare in that way in this case, nor that Mr and Mrs D had, when deciding to buy the timeshare, been motivated by the prospect of it being an investment.[1]

I asked the parties to the complaint to let me have any further submissions they wanted me to consider. The Lender said it accepted the provisional decision. PR did not reply.

The case has now been returned to me to review once more.

**What I've decided – and why**

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

Having reviewed the relevant information again, and noting that neither party to the complaint has provided me with any further evidence or arguments to consider, I see no reason to depart from the conclusions I reached in the appended provisional decision (as summarised above), and for the same reasons.

It follows that I won't be upholding this complaint for all the reasons previously stated. Ultimately, I do not think the Lender was wrong to decline Mr and Mrs D's Section 75 claim, nor do I think it participated in a credit relationship with them that was unfair to them within the meaning of Section 140A of the CCA..

**My final decision**

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

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

Will Culley
**Ombudsman**

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[1] I also noted that PR had not made this allegation itself but, because the allegation was made in the later statement said to have been made by Mr and Mrs D, I thought it right that I consider it.

**COPY OF PROVISIONAL DECISION**

I've considered the relevant information about this complaint.

Having done so, I've arrived at the same general conclusions as our Investigator, but I've explained my reasons in a bit more detail in places, so I'm issuing this provisional decision to give the parties to the complaint a further opportunity to make submissions.

The deadline for both parties to provide any further comments or evidence for me to consider is **16 April 2026**. Unless the information changes my mind, my final decision is likely to be along the following lines.

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

## The complaint

Mr and Mrs D's complaint is, in essence, that Shawbrook Bank Limited (the 'Lender') acted unfairly and unreasonably by (1) being party to an unfair credit relationship with them under Section 140A of the Consumer Credit Act 1974 (as amended) (the 'CCA') and (2) deciding against paying a claim under Section 75 of the CCA.

## What happened

Mr and Mrs D were members of a timeshare provider (the 'Supplier') – having made previous purchases from it in 2002 and 2003. The product at the centre of this complaint is their membership of a timeshare that I'll call the 'Fractional Club' – which they bought on 30 May 2013 (the 'Time of Sale'). They entered into an agreement with the Supplier to buy 14,000 fractional points at a cost of £23,520 (the 'Purchase Agreement'). Mr and Mrs D traded in 12,000 points they already held in the Supplier's 'European Collection' (another type of timeshare), as part of the purchase. After the trade in, the price they had to pay was £11,520, and they had 3,000 points remaining in the European Collection.

The points Mr and Mrs D acquired could be exchanged annually for holiday accommodation in the Supplier's portfolio. Fractional Club membership was also asset backed – which meant it gave Mr and Mrs D more than just holiday rights. It also included a share in the net sale proceeds of a property named on the Purchase Agreement (the 'Allocated Property') after their membership term ends.

Mr and Mrs D paid for their Fractional Club membership by taking finance of £11,520 from the Lender (the 'Credit Agreement'). This loan was repayable over 120 months at £183.75 per month. Mr and Mrs D settled the loan early, in July 2014.

Mr and Mrs D – using a professional representative (the 'PR') – wrote to the Lender on 15 March 2018 (the 'Letter of Complaint') to raise a number of different concerns. Further concerns were raised by the PR at a later date. Both sides are familiar with the issues raised, so it isn't necessary to repeat them in detail here beyond the summary above and the table below.

The Lender dealt with Mr and Mrs D's concerns as a complaint and issued its final response letter in November 2018, rejecting it on every ground.

The complaint was then referred to the Financial Ombudsman Service. There was a

significant delay in the Financial Ombudsman Service being able to assess the complaint. In March 2023 we received further submissions from the PR which focused further concerns on the way the loan had been arranged. And then, in September 2023, we received a final set of submissions from the PR in which it made no new allegations but provided a witness statement from Mr and Mrs D covering how the Fractional Club membership had been sold to them. The complaint was then assessed by an Investigator who, having considered the information on file, rejected the complaint on its merits.

PR, on Mr and Mrs D's behalf, disagreed with the Investigator's assessment and asked for an Ombudsman's decision – which is why it was passed to me.

**The legal and regulatory context**

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

The legal and regulatory context that I think is relevant to this complaint is no different to that shared in several hundred ombudsman decisions on very similar complaints. And with that being the case, it is not necessary to set it out here. But I would add that the following regulatory rules/guidance are also relevant:

<u>The Office of Fair Trading's Irresponsible Lending Guidance – 31 March 2010</u>

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

- Paragraph 2.2
- Paragraph 2.3
- Paragraph 5.5

<u>The OFT's Guidance for Credit Brokers and Intermediaries - 24 November 2011</u>

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

- Paragraph 2.2
- Paragraph 3.7
- Paragraph 4.8

**What I've provisionally decided – and why**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. And having done that, I do not currently think this complaint should be upheld.

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.

In the interests of efficiency and ease of reading, I have outlined my findings in a table format. Where a particular point has required more detailed explanation or analysis, this follows the table.

But before I set out my findings, I will cover very briefly the general grounds on which Mr and Mrs D seek redress from the Lender in relation to what are, in part, the *Supplier's* alleged wrongdoings as opposed to the Lender's. These grounds are that Mr and Mrs D have a claim under Section 75 of the CCA, and Section 140A of the CCA.

Section 75 of the CCA gives a person who has purchased goods or services with certain kinds of credit, a right to claim against their lender in respect of any breach of contract or misrepresentation on the part of the supplier of those goods or services. This is subject to certain technical conditions being met, which I am satisfied have been met in this case.

Section 140A of the CCA operates in a more complex manner. Insofar as is relevant to Mr and Mrs D's case, it means that the credit relationship between them and the Lender can be found to have been unfair to them because of anything done (or not done) by, or on behalf, of the Lender. An unfair credit relationship can also be based on the terms of a related agreement (such as the Purchase Agreement for the Fractional Club membership) and, when combined with Section 56 of the CCA, on anything done or not done by the Supplier on the Lender's behalf before the making of the Credit Agreement or any related agreement. Section 56 of the CCA has the effect of making the Supplier the Lender's agent for the purposes of the negotiations leading up to the purchase. So the Supplier's acts or omissions during that process are deemed to be the Lender's responsibility.

**Table of Summarised Findings**

| **Section 75 - Misrepresentations** | **Reason why this complaint doesn't succeed** |
|---|---|
| It was falsely represented that buying the product was the only way to exit Mr and Mrs D's existing European Collection membership. | There is insufficient persuasive evidence to be able to conclude the Supplier claimed this to be the case, or that Mr and Mrs D would have been eligible at the Time of Sale to exit their European Collection membership free of charge via other routes. |
| It was falsely represented that the product had a guaranteed or automatic exit date. | There's insufficient persuasive evidence the Supplier claimed this to be the case. The paperwork from the time indicates only that the property would be marketed for sale after a certain number of years, and I'm not convinced the Supplier claimed anything different at the Time of Sale. |
| It was falsely represented that Mr and Mrs D would be members of an exclusive club. | The allegations are somewhat vague and there is insufficient evidence that a specific false statement of fact was made. The Supplier's marketing materials do not say or suggest its resorts could only be used by members, and it appears some membership benefits were in fact exclusive to members. |

| It was falsely represented that Mr and Mrs D would be able to use their membership to book holidays. | Mr and Mrs D were able to book 63 nights of holiday with their membership between the Time of Sale and August 2016, so it wouldn't have been false to say they would be able to book holidays. |
|---|---|
| **Section 75 - Breaches of Contract** | **Reason why this complaint doesn't succeed** |
| It is possible that the Allocated Property will not be sold at the end of 15 years. | Given the contract does not guarantee the property will be sold on a specific date, a delay in the sale (if this were to happen) would not necessarily be a breach of contract. And any such *potential* breach would occur in the future and is currently uncertain. |
| **Matters allegedly rendering the credit relationship unfair** | **Reason why this complaint doesn't succeed** |
| The Purchase Agreement or associated contracts contained terms which were unfair to Mr and Mrs D. | It's possible some of the Supplier's terms had the potential to be operated in an unfair way against Mr and Mrs D, but no evidence has been provided to suggest the terms have been operated in this way or will be in the future. |
| The Lender failed to carry out the creditworthiness/affordability checks required by industry guidance or regulations. | No evidence has been provided that the loan was actually unaffordable, which would need to be shown if the complaint were to succeed on this point. |
| The Credit Agreement was arranged on the same day as the Purchase Agreement, and the Supplier's representatives were self-employed. | It's unclear why or how PR thinks this has caused unfairness in the credit relationship, but it doesn't appear to me that the employment status of the Supplier's representatives could be relevant, and given both the Purchase Agreement and Credit Agreement had cooling off periods, I can't see any immediate reason for the date of the Credit Agreement to have been problematic. |
| The Supplier marketed and sold the membership as an investment in breach of Regulation 14(3) of the Timeshare Regulations.[2] | I'm not convinced the Supplier marketed the product to Mr and Mrs D in this way. If it did, I don't think this was material to Mr and Mrs D's purchasing decision. **See further details below.** |
| The Lender paid the Supplier an undisclosed commission, and was in breach of a fiduciary duty to Mr and Mrs D. | Only a small commission was paid in this case, and nothing else about the commission arrangements between the Lender and Supplier would lead me to conclude the complaint ought to be upheld. **See further details below.** |

[2] PR has never actually made this allegation directly until after our Investigator's assessment, but it is implied from it having sent the Financial Ombudsman Service and the Lender a copy of a witness statement from Mr and Mrs D in September 2023.

The reasons why I don't think it's likely the Supplier marketed or sold the Fractional Club membership to Mr and Mrs D as an investment, or that this was material to their purchasing decision are as follows.

**The PR did not originally allege that the Supplier had sold or marketed the product in this way**

The Letter of Complaint made no mention of the Supplier having marketed or sold the Fractional Club membership to Mr and Mrs D as an investment. This allegation was first made by the PR more than five years after the complaint was originally brought to the Lender. It was not made to the Lender, or in any further submissions PR made to the Financial Ombudsman Service between early 2019 and late 2023. If the product had been marketed in this way, or if any prospect of the product being an investment had been significant to Mr and Mrs D, I would have expected it to have featured prominently in these initial submissions, but it doesn't feature at all.

**Mr and Mrs D appear to have ticked and signed to say they understood the product was not an investment**

Mr and Mrs D signed a declaration at the Time of Sale, and ticked against a statement on this declaration which said: *"We understand that…[the product] should not be regarded as a property or financial investment."* While I accept that what is committed to writing won't always reflect what was said verbally, or tell the full story of what happened, this indicates to me that a) the Supplier made *some* effort not to market or sell the product to Mr and Mrs D as an investment, and b) Mr and Mrs D may well have understood that what they were buying was not meant to be viewed as an investment, meaning it would be difficult to conclude that this was a material factor in their decision to buy the timeshare.

**It is not possible to place weight on the later witness statement said to have been written by Mr and Mrs D in 2017, but provided to the Financial Ombudsman Service in 2023**

I've seen a copy of an undated and unsigned witness statement which the PR suggests it received from Mr and Mrs D in 2017. The suggestion from PR is that it received this statement as part of a pack of documents from Mr and Mrs D, and that the date stamp on one of the documents in the pack shows it was received in 2017. And indeed, one of the documents in the pack – which is a copy of part of the Purchase Agreement – has been stamped with "Received 6 Dec 2017". In the witness statement, Mr and Mrs D purportedly recalled the following:

- They were told that changing from the European Collection to the Fractional Club would allow them to leave their relationship with the Supplier at any time because their fraction could be sold at any time.
- They were told they would own a percentage of a property, and a different timeshare provider[3] would sell the property and all investors would receive the profits.
- They were told longer the property was held for, the more profit they would make.
- They were told it was a great investment for the future.

I think it is strange that Mr and Mrs D would have given the PR a witness statement in 2017 which focused on the Supplier having sold the Fractional Club product to them as an investment, and for PR to have then drafted a Letter of Complaint (and subsequent

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[3] This appears to be a mistake in the witness statement. A different timeshare provider is mentioned, but presumably the intention is to refer to the Supplier.

submissions) which failed to refer to this, but referred to many other concerns which Mr and Mrs D hadn't mentioned.

It's also worth noting that we received the stamped document from the PR in February 2019, but without the stamp indicating it had been received on 6 December 2017. I think it is remarkable that a document stamped on 6 December 2017, could be sent to the Financial Ombudsman Service over a year later, missing this stamp. It is suggestive, in my view, of the stamp having been added sometime after February 2019. While there could be an innocent explanation for this discrepancy, in my mind this calls into question the provenance of the witness statement. Given this questionable provenance, lack of consistency with the complaint as originally made, and its very late emergence as a piece of evidence, I am able to place only the most limited amount of weight on it. I do not find it persuasive.

Overall, I think there's a lack of evidence to support an argument that there was any improper marketing of the Fractional Club product by the Supplier, in breach of Regulation 14(3) of the Timeshare Regulations, or that this had a material impact on Mr and Mrs D's decision to go ahead with the purchase.

**The alleged payment of a commission by the Lender to the Supplier**

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 and Mrs D 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.

As the Supreme Court said in paragraph 326 of its judgment in *Hopcraft, Johnson and Wrench,* it's not possible to simply apply the reasoning of the Supreme Court in *Plevin v Paragon Personal Finance Ltd* [2014] UKSC 61 ('*Plevin*') to this complaint (as the PR does) when it's concerned with a product and marketplace that were very different to those in *Plevin*. What's more, Mr and Mrs D were provided with information as to the price of Fractional Club membership and the cost of the Credit Agreement (interest rate, fees, APR and monthly repayments). So, they were at least in a position from which they could understand the cost of the Credit Agreement and compare it with other options that might have been available at the Time of Sale.

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

In stark contrast to the facts of Mr Johnson's case, the commission by the Lender to the Supplier for arranging the Credit Agreement was small, at £921.60. This was equal to 8% of the amount of the loan, or 8.7% of the cost of credit. So, had Mr and Mrs D known at the Time of Sale that the Supplier was going to be paid a flat rate of commission at that level, I'm not currently persuaded that they either wouldn't have understood that or would have otherwise questioned the size of the payment at that time. After all, Mr and Mrs D appear to have wanted Fractional Club membership and had no obvious means of their 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 Time of Sale had the amount of commission been disclosed.

What's more, based on what I've seen so far, the Supplier's role as a credit broker wasn't a separate service and distinct from its role as the seller of timeshares. It was simply a means to an end in the Supplier's overall pursuit of a successful timeshare sale. I can't see that the

Supplier gave an undertaking – either expressly or impliedly – to put to one side its commercial interests in pursuit of that goal when arranging the Credit Agreement. And as it wasn't acting as an agent of Mr and Mrs D 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 and Mrs D.

**Section 140A: Conclusion**

Given all of the factors I've looked at in this part of my decision, and having taken all of them into account, I'm not persuaded that the credit relationship between Mr and Mrs D and the Lender under the Credit Agreement and related Purchase Agreement was 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.

## Commission: The Alternative Grounds of Complaint

While I've found that Mr and Mrs D'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 and Mrs D'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 and Mrs D (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 and Mrs D 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 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 they would still have taken out the loan to fund their purchase at the Time of Sale had there been more adequate disclosure of the commission arrangements that applied at that time.

## Overall Conclusion

In conclusion, given the facts and circumstances of this complaint, I do not think that the Lender acted unfairly or unreasonably when it dealt with Mr and Mrs D's Section 75 claim. I am not persuaded that the Lender was party to a credit relationship with them under the Credit Agreement and related Purchase Agreement that was unfair to them 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 them.

## My provisional decision

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

Will Culley
**Ombudsman**