DRN-6308738

The complaint

Mr A complaint is, in essence, that Mitsubishi HC Capital UK Plc (the 'Lender') 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/claims] under Section 75 of the CCA.

What happened

Mr A was a trial member of a timeshare provider (the 'Supplier'). But the product at the centre of this complaint is his membership of a timeshare that I'll call the 'Fractional Club' – which he bought on 30 May 2019 (the 'Time of Sale') while on a 'bonus' holiday (a free holiday in exchange for attending a presentation). Mr A entered into an agreement with the Supplier to buy 910 fractional points at a cost of £13,960 (the 'Purchase Agreement') after trading in his Trial membership.

Fractional Club membership was asset backed – which meant it gave Mr A 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 his membership term ends.

Mr A paid for his Fractional Club membership by taking finance of £17,815 from the Lender (the 'Credit Agreement'). The additional amount was used to consolidate an earlier loan used to pay for trial membership.

Mr A – using a professional representative (the 'PR') – wrote to the Lender on 19 February 2020 (the 'Letter of Complaint') to raise a number of different concerns. As those concerns haven't changed since they were first raised, and as both sides are familiar with them, it isn't necessary to repeat them in detail here beyond the summary above.

The Lender dealt with Mr A's concerns as a complaint and issued its final response letter on 30 November 2020, rejecting it on every ground.

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

The Lender 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 8 April 2026. And I made the following provisional findings (which form part of this final decision):

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

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

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

It was said in the Letter of Complaint that Fractional Club membership had been misrepresented by the Supplier at the Time of Sale because Mr A was told or led to believe by the Supplier that Fractional Club membership:

(1) Was of some substance.

However, the PR says Fractional Club membership has no merit and is worthless. But I am not persuaded its argument. Clearly the Fractional Club membership could be used to take holidays and Mr A had a right to a share of the net sale proceeds upon the sale of the Allocated Property at the end of the membership term.

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

Section 75 of the CCA: the Supplier's Breach of Contract

I have already summarised how Section 75 of the CCA works and why it gives consumers a right of recourse against a lender. So, it is not necessary to repeat that here other than to say that, if I find that the Supplier is liable for having breached the Purchase Agreement, the Lender is also liable.

The PR says that the Supplier breached the Purchase Agreement, implying it cannot deliver the holidays and other benefits promised, because part of the Supplier's group of companies went into administration. But my understanding is that the Fractional Club is still functioning, members can still use it and the Allocated Property will be sold by the Trustee and net sale proceeds distributed to the Fractional Owners at the relevant time.

So, from the evidence I have seen, I do not think the Lender is liable to pay Mr A any compensation for a breach of contract by the Supplier. And with that being the case, I do not think the Lender acted unfairly or unreasonably in relation to this aspect of the complaint either.

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

I've already explained why I'm not persuaded that Fractional Club membership was actionably misrepresented by the Supplier at the Time of Sale. But there are other aspects of the sales process that, being the subject of dissatisfaction, I must explore with Section 140A in mind if I'm to consider this complaint in full – which is what I've done next.

The PR says, for instance, that:

1. The right checks weren't carried out before the Lender lent to Mr A.

2. Mr A was not given a choice of lenders.

3. Mr A was pressured by the Supplier into purchasing Fractional Club membership at the Time of Sale.

4. Fractional Club membership was marketed and sold as investment in breach of a prohibition on doing so.

However, having considered the entirety of the credit relationship between Mr A 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. The commission arrangements between the Lender and the Supplier at the Time of Sale and the disclosure of those arrangements.

4. Evidence provided by both parties on what was likely to have been said and/or done at the Time of Sale.

5. The inherent probabilities of the sale given its circumstances.

6. Where relevant, any existing unfairness from a related credit agreement.

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

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

While the PR says that the right affordability checks weren't carried out at the Time of Sale, even if I were to find that the Lender failed to do everything it should have when it agreed to lend (and I make no such finding), I would have to be satisfied that the money lent to Mr A was actually unaffordable before also concluding that he lost out as a result and then consider whether the credit relationship with the Lender was unfair to him for this reason. But from the information provided, I am not satisfied that the lending was unaffordable for the Mr A.

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

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

Overall, therefore, I don't think that Mr A credit relationship with the Lender was rendered unfair to him under Section 140A for any of the reasons above. 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 him as an investment in breach of prohibition against selling timeshares in that way.

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

The Lender does not dispute, and I am satisfied, that Mr A'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.

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 A the prospect of a financial return – whether or not, like all investments, that was more than what he 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 A 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 him as an investment, i.e. told him or led him to believe that Fractional Club membership offered him 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 A, the financial value of his 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 A as an investment in breach of Regulation 14(3).

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

Would the credit relationship between the Lender and Mr A have been rendered unfair to him 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 A 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 A and the Lender 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.

But on my reading of the evidence before me, the prospect of a financial gain from Fractional Club membership was not an important and motivating factor when Mr A decided to go ahead with his purchase.

I say this because:

1. The PR provided an unsigned and undated statement from Mr A on 30 October 2023. This had not been provided previously to the Lender of the Financial Ombudsman Service. This was 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 & BPF v FOS*') was handed down.

2. In my experience, 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, I find it difficult to understand why the Financial Ombudsman Service was only given such evidence when it was – particularly given the PR said when referring the complaint to us on 10 June 2020 that it was providing *"our clients completed complaint form along with supporting evidence."* That suggests that all relevant evidence was provided at that time. And given that included the Letter of Complaint, Letter of Authority, Credit Agreement, Purchase Agreement, Pre-Contract Credit Information, and several letters from the Lender about the complaint, I cannot understand why the statement was not provided at that time if it had already been written. And I do not accept that it was left out on the instruction of the Financial Ombudsman Service, as the PR has argued in some other cases. Afterall, the letter from us that the PR referred to in those cases said we only required a completed Complaint Form to register a complaint. And the PR provided much more than this, only omitting the statement from its submission.

3. So, while the statement alleges Mr A purchased Fractional Club membership in part because he was told Fractional Club membership was an investment from which he could make money from, it appears that Mr A only recalled this years after making the complaint.

4. The Letter of Complaint says that Mr A was advised he could *"make a profit on the investment"* when referring to the purchase, it also makes allegations that Mr A has never himself mentioned, such as initially being told the purchase price was £30,000 (which the Supplier denies and says the PR has alleged inaccurately in numerous complaints), that he would make significant savings on holidays and have access to exclusive accommodation. So, it is not clear to me that the Letter of Complaint is based on Mr A's recollections, rather than being a generic letter it has used in many complaints. It does appear to be almost identical to a number of other complaints I have seen where the PR has been the representative.

5. The statement says that Mr A did not want to make the purchase, but because of the persistence and bullying of the salespeople over two days, he agreed to so that he could relax and enjoy the rest of the holiday, and because it was an investment. However, I am not persuaded that this rings true. Particularly given the Supplier says its records show that Mr A told it after the sale was agreed that Mr A intended to purchase more Fractional Points in future, the amount purchased being less than he would like.

In summary, the evidence overall doesn't persuade me that Mr A's purchase was motivated by his share in the Allocated Property and the possibility of a profit. Mr A's evidence is not sufficiently persuasive for me to reach that conclusion, and he was purchasing full membership for the first time – obtaining annual holiday rights for the full membership term, which he did not previously own (a point the statement does not mention). So, I don't think a breach of Regulation 14(3) by the Supplier was likely to have been material to the decision he ultimately made. And for that reason, I do not think the credit relationship between Mr A and the Lender 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

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 A sufficient information, in good time, on the various aspects of Fractional Club membership 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 this has caused any unfairness to Mr A And as neither Mr A nor the PR have persuaded me that he would not have pressed ahead with his 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 says that a payment of commission from the Lender to the Supplier at the Time of Sale should lead me to uphold this complaint because, simply put, information in relation to that payment went undisclosed at the Time of Sale.

As both sides already know, the Supreme Court handed down an important judgment on 1 August 2025 in a series of cases concerned with the issue of commission: *Johnson v FirstRand Bank Ltd, Wrench v FirstRand Bank Ltd and Hopcraft v Close Brothers Ltd* [2025] UKSC 33 ('*Hopcraft, Johnson and Wrench*').

The Supreme Court ruled that, in each of the three cases, the commission payments made to car dealers by lenders were legal, as claims for the tort of bribery, or the dishonest assistance of a breach of fiduciary duty, had to be predicated on the car dealer owing a fiduciary duty to the consumer, which the car dealers did not owe. A "disinterested duty", as described in *Wood v Commercial First Business Ltd & ors and Business Mortgage Finance 4 plc v Pengelly* [2021] EWCA Civ 471, is not enough.

However, the Supreme Court held that the credit relationship between the lender and Mr Johnson was unfair under Section 140A of the CCA because of the commission paid by the lender to the car dealer. The main reasons for coming to that conclusion included, amongst other things, the following factors:

1. The size of the commission (as a percentage of the total charge for credit). In Mr Johnson's case it was 55%. This was *"so high"* and *"a powerful indication that the relationship…was unfair"* (see paragraph 327).

2. The failure to disclose the commission.

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).

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 A 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 A, 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 A 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 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 A.

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 A entered wasn't high. At £712.60, it was only 4% of the amount borrowed and even less than that (3.7%) 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 currently 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 A 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 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 A but as the supplier of contractual rights that 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 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 A.

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 A and the Lender under the Credit Agreement and related Purchase Agreement was unfair to him. 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 A 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 A 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 A (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 A 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.

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 A Section 75 claims. I am not persuaded that the Lender was party to a credit relationship with him under the Credit Agreement and related Purchase Agreement 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 to direct the Lender to compensate him.

So, in summary, I wasn't persuaded by any of the arguments put forward for why the credit relationship between Mr A and the Lender 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 the Lender to compensate Mr A – all of which led me to provisionally conclude that there was no basis on which to uphold the complaint.

The Lender accepted my provisional decision. The PR disagreed with my overall conclusion. When doing that, its response focussed on the suggestion that Mr A's credit relationship with the Lender was unfair to him. Broadly speaking the PR said this was for the following reasons:

1. Mr A did not own a share of the Allocated Property
2. He would not receive a share of the sale proceeds when it is sold (and the PR said there was no guarantee it ever would be sold).
3. Mr A's statement confirms Fractional Club membership was sold to him as an investment from which he would profit. The statement was not provided earlier in compliance with instructions from an ombudsman leader at the Financial Ombudsman Service.
    a. The Supplier fraudulently misrepresented Fractional Club ownership because Mr A did not hold a genuine unencumbered interest in the Allocated Property.
    b. The cost including loan interest and annual management charges mean that no reasonable consumer would ever commit to the purchase without a guaranteed financial return upon the future sale of the Allocated Property.
    c. The trust structure providing security was an illusion given the charge on its assets.
4. The commercial (including commission) arrangements between the Lender and the Supplier and the resulting commission payment were not properly disclosed to Mr A and he was prevented from seeking credit independently.

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

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 giving Mr A a claim against the Lender under Section 75 of the CCA, which the Lender failed to accept and pay.

(2) A breach of contract by the Supplier giving Mr A a claim against the Lender under Section 75 of the CCA, which the Lender failed to accept and pay.

(3) The Lender 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 the PR's more concise response to my provisional decision relates only to (3), because I haven't been provided with new arguments and/or evidence to consider in relation to (1) and (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 them.

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 have read all of the PR's submissions in full, if I have not commented on, or referred to, something that either party has said, that does not mean I have not considered it.

Section 75 of the CCA: the Supplier's misrepresentations at the 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 Fractional Club membership was fraudulently misrepresented because Mr A did not hold a genuine unencumbered interest in the Allocated Property.

But I do not think he was promised an unencumbered interest in the Allocated Property. Mr A was sold Fractional Club membership which included fractional points to spend on holidays, and a share of the net sale proceeds when the Allocated Property was sold (amongst other benefits). That may have been described as akin to owning part of the Allocated Property, but I am not persuaded he was told that he would actually own part of the property. The documents provided to him explained how this worked, and I am not persuaded that this was misrepresented to him at all, let alone fraudulently.

I have no compelling reason to think that the Allocated Property will not be sold by the Trustee at the relevant time and the net sale proceeds distributed to the Fractional Owners in accordance with their share – as set out in the relevant documents.

I'm not persuaded, therefore, by the allegations of fraudulent misrepresentation from the PR. And with that being the case, they too aren't reasons to uphold this complaint and direct the Lender to compensate Mr A.

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

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

However, there are other reasons 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 A and the Lender was likely to have been rendered unfair to him for the purposes of Section 140A.

When coming to that conclusion, I have 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 have also reconsidered any commercial (including commission) arrangements between the Lender and the Supplier at the Time of Sale and the disclosure of those arrangements.

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

However, as neither the PR nor Mr A have submitted any new evidence to further this argument, it is for the same reasons I gave in my provisional decision that I don't think they render his credit relationship with the Lender unfair to him for the purposes of Section 140A.

The Lender's charge over the Trustee's assets

The PR has provided a copy of a charge registered at Companies House. It says that this shows the Allocated Property was encumbered. But I can see that:

1. The Allocated Property is not one of the apartments named in the charge.

2. The charge was satisfied on 9 February 2026

So, the charge in question does not appear to be relevant to Mr A's complaint, given the charge has been satisfied and did not in any case apply to the Allocated Property.

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

It still seems to me that, if I am to conclude that a breach of Regulation 14(3) led to a credit relationship between Mr A and the Lender that was unfair to him and warranted relief as a result, whether the Supplier's alleged 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 A and the Lender 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 have 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 A and the Lender 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 A decided to go ahead with his purchase, such that he would have made an entirely different purchasing decision had there not been a breach of Regulation 14(3). And I say that for the same reasons given in my provisional decision.

The PR says Mr A's statement was not provided on referral of the complaint to the Financial Ombudsman Service because of a direction from an ombudsman leader in April 2018. But I addressed this in my provisional decision – pointing out that the PR appears to have submitted everything but Mr A's statement when referring the complaint to us, despite having been told (as it acknowledged) that we only required a completed complaint form at that stage. So, I am still not persuaded that the PR omitted the statement because of the ombudsman leader's letter. And my provisional findings on this point remain unchanged.

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

The overall cost of Fractional Club membership

The PR argues that the overall cost of Fractional Club membership, including the loan interest and annual management fees, mean that no reasonable consumer would ever commit to the purchase without a guaranteed financial return upon the future sale of the Allocated Property. But I am not persuaded that this is the only possible explanation for Mr A's decision to purchase, nor that the evidence in this case is sufficient for me to conclude that this is why Mr A entered into the purchase.

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 in my provisional decision. I remain satisfied that the Lender has provided me with sufficient information to reach a conclusion about its 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 my provisional findings on this, 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 the Lender rendered the credit relationship between the latter and Mr A under the Credit Agreement and related Purchase Agreement unfair for the purposes of Section 140A.

Conclusion

Having adopted my provisional findings, and reconsidered the facts and circumstances of this complaint, I still I don't think the Lender acted unfairly or unreasonably when it dealt with Mr A's section 75 claims. I'm still not persuaded that the Lender was party to a credit relationship with Mr A 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 the Lender to compensate Mr A.

My final decision

For the reasons I've explained, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 20 May 2026.

Phillip Lai-Fang
Ombudsman