DRN-4530470

The complaint

Mr and Mrs L's complaint is, in essence, that Shawbrook Bank Limited (the 'Lender') acted unfairly and unreasonably under the Consumer Credit Act 1974 (as amended) (the 'CCA').

Background to the complaint

Mr and Mrs L purchased membership of a timeshare (the 'Fractional Club') from a timeshare provider (the 'Supplier') on 15 June 2014 (the 'Time of Sale'). They entered into an agreement with the Supplier to buy 3,080 fractional points at a cost of £43,339 (the 'Purchase Agreement'). But after trading in their existing timeshare, they ended up paying £5,928 for membership of the Fractional Club.

Mr and Mrs L were existing customers of the Supplier. Although their complaint only concerns the Fractional Club membership they purchased in 2014, I have set out their purchase history below:

- In 2007, Mr and Mrs L purchased a Trial Membership with the Supplier.
- In 2008, they traded in their Trial Membership for a "Vacation Club" membership, giving them 1,501 points to exchange for holiday accommodation.
- In 2011, they purchased a further 1,000 points.
- In May 2013, Mr and Mrs L traded in their "Vacation Club" membership for a fractional club membership, giving them a total of 2,988 points. This was later traded in for the Fractional Club membership that is the subject of this complaint.

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

Mr and Mrs L paid for their Fractional Club membership by taking finance of £5,928 from the Lender (the 'Credit Agreement').

Mr and Mrs L – using a professional representative (the 'PR') – wrote to the Lender on 28 December 2018 (the 'Letter of Complaint') to complain about the events that happened at the Time of Sale, referring to sections 75 and 75A of the CCA. The PR says:

"Our clients were members of [the Supplier's] Points system. At first our clients were happy with [the Supplier] but with the ever increasing maintenance fees and increasing lack of availability when and where they wanted to holiday. The main problem was that the points were until 2069, as their family did not want them they tried to sell their points. Unfortunately this was impossible and so they approached [the Supplier] when on holiday in Tenerife in June 2014.

They were told by a [Supplier] representative that the only way to get out of points was to buy into [the Supplier's] Fractional Timeshare.

This gave them an option to sell the fractional in 19 years and get a return on their money they were as they were desperate to find a solution and also the fact that [the Supplier] told

them that if for whatever reason they passed away at least then their children would get a return on the 19 th year so it acted like a pension fund for them or an inheritance for their children. So they agreed to go ahead and bought 4 weeks at [the Resort] which also gave them 3,080 points instead of 2,988 points that they had before".

The Lender dealt with Mr and Mrs L's concerns as a complaint and issued its final response letter on 7 February 2019, rejecting it on every ground.

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

Later, another Investigator considered the information again and also rejected the complaint on its merits.

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

I agreed with the outcome reached by our Investigator but wished to expand the reasoning for doing so. Therefore, I issued a provisional decision (the 'PD') setting out why I thought the complaint ought to be rejected.

In the PD, I first set out the legal and regulatory context for the complaint, as well as what I thought was representative of good industry practice at the Time of Sale:

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.

I will refer to and set out several regulatory requirements, legal concepts and guidance in this decision, but I am satisfied that of particular relevance to this complaint is:

- *The CCA (including Section 75, 75A and Sections 140A-140C).*
- *The law on misrepresentation.*
- *The Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010 (the 'Timeshare Regulations').*
- *Case law on Section 140A of the CCA – including, in particular:*

    - *The Supreme Court's judgment in Plevin v Paragon Personal Finance Ltd [2014] UKSC 61 ('Plevin') (which remains the leading case in this area).*
    - *Scotland v British Credit Trust [2014] EWCA Civ 790 ('Scotland and Reast')*
    - *Patel v Patel [2009] EWHC 3264 (QB) ('Patel').*
    - *The Supreme Court's judgment in Smith v Royal Bank of Scotland Plc [2023] UKSC 34 ('Smith').*
    - *Carney v NM Rothschild & Sons Ltd [2018] EWHC 958 ('Carney').*
    - *Kerrigan v Elevate Credit International Ltd [2020] EWHC 2169 (Comm) ('Kerrigan').*
    - *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').*

Good industry practice – the RDO Code

The Timeshare Regulations provided a regulatory framework. But as the parties to this complaint already know, I am also required to take into account, when appropriate, what I consider to have been good industry practice at the relevant time – which, in this complaint, includes the Resort Development Organisation's Code of Conduct dated 1 January 2010 (the 'RDO Code').

I then gave my provisional findings, which were as follows:

My provisional findings

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

And having done that, I do not currently think this complaint should be upheld.

But before I explain why, 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.

What is more, I have made my decision on the balance of probabilities – which means I have based it on what I think is more likely than not to have happened given the available evidence and the wider circumstances.

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") in the event that there is an actionable misrepresentation and/or breach of contract by the supplier.

In short, a claim against the Lender under Section 75 essentially mirrors the claim Mr and Mrs L could make against the Supplier.

Certain conditions must be met if the protection afforded to consumers is engaged, including the condition that the cash price of the purchase must exceed £100 but not exceed £30,000. So, if the purchase price of the product is in excess of £30,000, irrespective of the value of any trade-in, a claim under Section 75 cannot succeed.

As I have seen from the purchase documents, Mr and Mrs L's Fractional Club membership cost £43,339, which is greater than the upper limit covered by Section 75. So, I am satisfied that Mr and Mrs L's claims under Section 75 for misrepresentation cannot succeed for this reason.

Section 75 of the CCA: the Supplier's breach of contract

I've already summarised how Section 75 of the CCA works and why it gives Mr and Mrs L a right of recourse against the Lender. So, it isn't 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 in the Letter of Complaint that Mr and Mrs L found it increasingly difficult to book holidays using the Fractional Club membership as there is "hardly any availability". By this, I understand the PR is alleging that there was a breach of the Purchase Agreement as a result.

Section 75A CCA makes further provision for a creditor to be liable for breaches by the Supplier, in the event that certain conditions are met. One of these conditions is that the cost of the goods or service is over £30,000 and the linked Credit Agreement is for credit which does not exceed £60,260. One of the following conditions must also be met:

- *The Supplier cannot be traced.*
- *The Debtor has contacted the Supplier, but the Supplier has not responded.*
- *The Supplier is insolvent.*
- *The Debtor has taken reasonable steps to pursue his claim against the Supplier but has not obtained satisfaction for his claim.*

I have not seen sufficient evidence to satisfy me that one or more of those conditions have been met. However, in Mr and Mrs L's case, I don't think this matters as I have not seen enough evidence that they were unable to use their Fractional Club membership to take holidays in the same way they could initially.

Overall, therefore, from the evidence I have seen to date, I do not think the Lender is liable to pay Mr and Mrs L 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 when it dealt with the Section 75A claim in question.

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

I have already explained why I am not persuaded that Mr and Mrs L had a successful claim under Section 75 and Section 75A of the CCA. But, the PR also says the Fractional Club membership was sold to Mr and Mrs L as an investment when it was not supposed to be as it says:

"Our clients have since found out that firstly it is illegal to buy timeshare under the new timeshare act 2012 as an investment and looking at the paperwork It states in the contract that they will only sell fractions if the client buys into a Freehold Property with [the Supplier]."

The PR has suggested in its response to our Investigator that the contract is not a "timeshare contract" as its terms instead fell within the definition of a "Collective Investment Scheme". But the Lender does not dispute, and I am satisfied, that Mr and Mrs L'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 membership of the Fractional Club 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. So, for completeness, that is what I have considered here.

However, as a possible breach of Regulation 14(3) does not fall neatly into a claim under Sections 75 or 75A of the CCA, I must turn to another provision of the CCA if I am to consider this aspect of the complaint and arrive at a fair and reasonable outcome. And that provision is Section 140A.

Under Section 140A of the CCA, 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) (s.140A(1) CCA). Such a finding may also be based on the terms of any related agreement (which here, includes the Purchase Agreement) and, when combined with Section 56 of the CCA, 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.

Section 56 plays an important role in the CCA because it defines the terms "antecedent negotiations" and "negotiator". As a result, it provides a foundation for a number of provisions that follow it. But it also creates a statutory agency in particular circumstances. And while Section 56(1) sets out three of them, the most relevant to this complaint are negotiations conducted by the supplier in relation to a transaction financed or proposed to be financed by a debtor-creditor-supplier agreement.

A debtor-creditor-supplier agreement is defined by Section 12(b) of the CCA as "a restricted-use credit agreement which falls within section 11(1)(b) and is made by the creditor under pre-existing arrangements, or in contemplation of future arrangements, between himself and the supplier […]". And Section 11(1)(b) of the CCA says that a restricted-use credit agreement is a regulated credit agreement used to "finance a transaction between the debtor and a person (the 'supplier') other than the creditor […] and "restricted-use credit" shall be construed accordingly."

The Lender doesn't dispute that there was a pre-existing arrangement between it and the Supplier. So, the negotiations conducted by the Supplier during the sale of Mr and Mrs L's membership of the Fractional Club were conducted in relation to a transaction financed or proposed to be financed by a debtor-creditor-supplier agreement as defined by Section 12(b). That made them antecedent negotiations under Section 56(1)(c) – which, in turn, meant that they were conducted by the Supplier as an agent for the Lender as per Section 56(2). And such antecedent negotiations were "any other thing done (or not done) by, or on behalf of, the creditor" under s.140(1)(c) CCA.

Antecedent negotiations under Section 56 cover both the acts and omissions of the Supplier, as Lord Sumption made clear in Plevin, at paragraph 31:

"[Section] 56 provides that [when] antecedent negotiations for a debtor-creditor-supplier agreement are conducted by a credit-broker or the supplier, the negotiations are "deemed to be conducted by the negotiator in the capacity of agent of the creditor as well as in his actual capacity". The result is that the debtor's statutory rights of withdrawal from prospective agreements, cancellation and rescission may arise on account of the conduct of the negotiator whether or not he was the creditor's agent.' […] Sections 56 and 140A(3) provide for a deemed agency, even in a case where there is no actual one. […] These provisions are there because without them the creditor's responsibility would be engaged only by its own acts or omissions or those of its agents."

And this was recognised by Mrs Justice Collins Rice in Shawbrook & BPF v FOS at paragraph 135:

"By virtue of the deemed agency provision of s.56, therefore, acts or omissions 'by or on behalf of' the bank within s.140A(1)(c) may include acts or omissions of the timeshare company in 'antecedent negotiations' with the consumer".

In the case of Scotland & Reast, the Court of Appeal said, at paragraph 56, that the effect of Section 56(2) of the CCA meant that "negotiations are deemed to have been conducted by the negotiator as agent for the creditor, and that is so irrespective of what the position would have been at common law" before going on to say the following in paragraph 74:

"[...] there is nothing in the wording of s.56(2) to suggest any legislative intent to limit its application so as to exclude s.140A. Moreover, the words in s.140A(1)(c) "any other thing done (or not done) by, or on behalf of, the creditor" are entirely apposite to include antecedent negotiations falling within the scope of s.56(1)(c) and which are deemed by s.56(2) to have been conducted by the supplier as agent of the creditor. Indeed the purpose of s.56(2) is to render the creditor responsible for such statements made by the negotiator and so it seems to me wholly consistent with the scheme of the Act that, where appropriate, they should be taken into account in assessing whether the relationship between the creditor and the debtor is unfair."[1]

So, the Supplier is deemed to be the Lender's statutory agent for the purpose of the pre-contractual negotiations.

However, an assessment of unfairness under Section 140A isn't limited to what happened immediately before or at the time a credit agreement and related agreement were entered into. The High Court held in Patel (which was recently approved by the Supreme Court in the case of Smith), that determining whether or not the relationship complained of was unfair had to be made "having regard to the entirety of the relationship and all potentially relevant matters up to the time of making the determination" – which was the date of the trial in the case of an existing credit relationship or otherwise the date the credit relationship ended.

The breadth of the unfair relationship test under Section 140A, therefore, is stark. But it isn't a right afforded to a debtor simply because of a breach of a legal or equitable duty. 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."

Instead, it was said by the Supreme Court in Plevin that the protection afforded to debtors by Section 140A is the consequence of all of the relevant facts.

I have considered the entirety of the credit relationship between Mr and Mrs L and the Lender along with all of the circumstances of the complaint and I do not 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 all the evidence provided by both parties on what was likely to have been said and/or done at the Time of Sale.

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

As I have already said, although the PR has not correctly identified the Timeshare Regulations, or what these say, in effect it says that the Supplier breached Regulation 14(3)

---

[1] The Court of Appeal's decision in *Scotland* was recently followed in *Smith*.

of the Timeshare Regulations. The term "investment" is not defined in the Timeshare Regulations. In Shawbrook & BPF v FOS, the parties agreed 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" at [56]. I will use the same definition.

Mr and Mrs L's share in the Allocated Property clearly, in my view, constituted an investment as it offered them the prospect of a financial return – whether or not, like all investments, that was more than what they first put into it. But 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 and Mrs L as an investment in breach of Regulation 14(3), I have to be persuaded that it was more likely than not that the Supplier marketed and/or sold membership to them as an investment, i.e. told them or led them to believe that Fractional Club membership offered them the prospect of a financial gain (i.e., a profit) given the facts and circumstances of this complaint.

From the information presented to me, I can see the Supplier did make efforts to avoid specifically describing membership of the Fractional Club as an 'investment' or quantifying to prospective purchasers, such as Mr and Mrs L, the financial value of their share in the net sales proceeds of the Allocated Property along with the investment considerations, risks and rewards attached to them. For example, the Member's Declaration document says:

"We understand that the purchase of our Fraction is for the primary purpose of holidays and is not specifically for direct purposes of a trade in and that [the Supplier] makes no representation as to the future price or value of the Fraction."

With that said, I accept that it's possible that Fractional Club membership was marketed and sold to Mr and Mrs L as an investment in breach of Regulation 14(3) given the difficulty the Supplier was likely to have had in presenting a share in the net sales proceeds of the Allocated Property as an important feature of Fractional Club membership without breaching the relevant prohibition.

However, I don't think it's necessary to make a finding on this point because, as I'll go on to explain, I'm not currently persuaded that would make a difference to Mr and Mrs L's complaint anyway.

Was the credit relationship between the Lender and Mr and Mrs L rendered unfair?

As the Supreme Court's judgment in Plevin makes clear, it does not automatically follow that regulatory breaches 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 am also mindful of what HHJ Waksman QC (as he then was) and HHJ Worster had to say in Carney and 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 seems to me that, if I am to conclude that a breach of Regulation 14(3) led to a credit relationship between Mr and Mrs L and the Lender that was unfair to them and warranted relief as a result, whether the Supplier's breach of Regulation 14(3) which, having taken place during its antecedent negotiations with them, is covered by Section 56 of the CCA, falls within the notion of "any other thing done (or not done) by, or on behalf of, the creditor" for the purposes of 140(1)(c) of the CCA and deemed to be something done by the Lender) led them to enter into the Purchase Agreement and the Credit Agreement is an important consideration.

On my reading of the evidence provided, I'm not persuaded that was what is more likely than not to have happened at the Time of Sale. I'll explain why.

The Investigator asked the PR for a copy of any written testimony from Mr and Mrs L, to better understand what they think went wrong at the Time of Sale. The PR explained to the Investigator that it conducted visits to clients' homes and took a synopsis of the events which it "translated" into the Letter of Complaint. So, it did not have any direct testimony to share with our service.

I have thought about what the PR's Letter of Complaint says about Mr and Mrs L's motivation to enter the Fractional Club membership, which I set out above. Mr and Mrs L say that they were becoming unhappy with their points-based membership because of the maintenance fees increasing and because there was a lack of availability of the holidays they wanted. They say the main problem was that the membership term ran until 2069. So, a shorter membership term was clearly an important factor, if not the most important factor, in their decision to upgrade from their points-based membership to a fractional membership. But that upgrade happened in May 2013 during an earlier sales event, not at the Time of Sale as recalled in the Letter of Complaint. So, Mr and Mrs L already owned a product that gave them a shorter membership term and four-weeks of fractional rights in an Allocated Property. So, I don't agree the shorter membership term was the deciding factor in their decision to purchase the Fractional Club membership at the Time of Sale.

I have thought about what Mr and Mrs L say the Supplier told them about the future sale of their fractional rights in the Allocated Property. They recall being told they would receive a

"return" in 19 years when the Allocated Property was due to be sold. But they did not say or suggest that the Supplier led them to believe that any return they would see on their Fractional Club membership would lead to a financial gain (i.e., a profit). So, regardless of whether these recollections were of events in May 2013, or the Time of Sale, I am not persuaded that Mr and Mrs L were motivated to enter the Fractional Club membership because they expected to receive a profit in the future.

The PR says that the Supplier has denied selling the Fractional Club membership as an investment and that Mr and Mrs L only bought it for their holidays. The PR suggests this doesn't make sense because of the relatively small increase in the points allocation and the cost of the upgrade. As far as I can see, the key difference between the Fractional Club membership they purchased, and the membership they traded in at that time, is that the former gave them more points to use on holiday accommodation.

On balance, therefore, even if the Supplier had marketed or sold the Fractional Club membership as an investment in breach of Regulation 14(3) of the Timeshare Regulations, I am not persuaded that Mr and Mrs L's decision to purchase Fractional Club membership at the Time of Sale was motivated by the prospect of a financial gain (i.e., a profit). On the contrary, I think the evidence suggests they would have pressed ahead with the purchase whether or not there had been a breach of Regulation 14(3). And for that reason, I do not think the credit relationship between Mr and Mrs L and the Lender was unfair to them even if the Supplier had breached Regulation 14(3).

Responses to the PD

The Lender agreed with the findings in my PD.

The PR responded after the deadline had passed, saying it would ask for Mr and Mrs L's opinion. It then produced a "signed personal statement" which I can see was signed by both Mr and Mrs L. I'll give my thoughts on exactly what they've said below where I set out my findings, but I've summarised what I think are the key points:

- Mr and Mrs L were told in 2013 that they could reduce the term of their existing points-based membership with the Supplier by converting to a fractional membership, which would also allow them to continue taking holidays.
- The focus of the presentation was on the financial benefits for entering the membership, namely they would make a "*significant*" profit at the end of the 19-year term, and that this would offer them a secure pension and an inheritance for their children.
- When invited to update meetings after 2013, they were assured by the sales representative that their expected profits would increase with further purchases.

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 so, and having considered everything that has been submitted in response to my PD, I remain satisfied that this complaint ought not to be upheld, for broadly the same reasons I set out in the PD. I will address the new information provided by the PR, but in doing so, I note again that my role as an Ombudsman is not to address every single point that has been made in response. Instead, it is to decide what is fair and reasonable in the circumstances of this complaint. So, while I have read the PR's response in full, I will confine my findings to what I think are the salient points.

Firstly, I'll consider Mr and Mrs L's witness testimony. In order to do this, I need to first think about *when* it was written and how this might affect *what* was written. The testimony is dated 6 June 2025. By that stage, Mr and Mrs L – and their PR – had read what I've had to say about the complaint in some detail, and my reasons for saying it. So, for the reasons I'll explain, it's difficult for me to place much weight on it for that reason.

I'm mindful that Mr and Mrs L – or at least their PR – will have read, or been made aware of, the outcome of *Shawbrook & BPF v FOS.* And reading the testimony, I think it is influenced by the focus of that case on the selling of fractional timeshares as investments. For example, the testimony is completely silent about the holiday accommodation Mr and Mrs L could receive through the membership, or the problems they say they had in finding accommodation at a time that suited them, when this was a significant part of the complaint when it was first made. Instead, their testimony focuses on the investment elements of both Mr and Mrs L's fractional purchases. Yet there is very little detail about exactly *what* the Supplier's sales agents said during the sales meetings to persuade them that the fractional product should be seen as an investment opportunity. I am also conscious that their evidence was produced after my PD where I highlighted the lack of evidence on this very point, so there is a real risk their evidence has been influenced by being involved in the complaint process. That is not to say Mr and Mrs L have not given their honest recollections, rather it is my view that their memories are likely affected by what was in my PD.

Regarding what the Supplier's sales agents said at the Time of Sale, Mr and Mrs L say:

"… the sales team continued to assure us that our profits would only increase – "a bigger slice of the pie means a bigger profit.""

But it's unclear to me why the sales agents would describe the upgraded Fractional Club membership in these terms. I say this because Mr and Mrs L's Fractional Club membership included four fractions in the Allocated Property listed in their paperwork, which is the same number they held as part of their previous fractional membership. I also repeat what I said in the PD that Mr and Mrs L's Letter of Complaint does not mention that they were told by the Supplier they could make a *profit*. So, I'm not persuaded that the Supplier described the Fractional Club in these terms, or that Mr and Mrs L went ahead with the purchase on that basis. There is no reason given why they were not able to provide this detail along with their earlier complaint.

Lastly, Mr and Mrs L say:

"There were many members present at these meetings who can confirm that we were all told we would make a lot of money when the apartments were sold. Sadly, this has not been the case. Instead, we have lost what we believed would be our retirement fund and our children's inheritance."

As I see it, the way they worded this statement is in contrast with the paperwork, and their own testimony, which make it clear that the sale was due to happen after the *end* of their membership term, after 31 December 2032, so it's not something that they could have expected to have already happened.

In summary, Mr and Mrs L's witness testimony doesn't persuade me that any breach of the prohibition under Regulation 14(3) by the Supplier was material to their decision to enter the Purchase Agreement and related Credit Agreement.

Other matters

I have also reconsidered everything else that I said in the PD in response to the other aspects of Mr and Mrs L's complaint. The PR hasn't provided any further evidence or arguments in relation to these other points, so I see no reason to depart from my findings on these as set out in the PD.

Conclusion

Given the facts and circumstances of this complaint, I don't think the Lender acted unfairly or unreasonably when it dealt with Mr and Mrs L's Section 75 claims, and I'm not persuaded that the Lender was party to a credit relationship with them 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 final decision

For the reasons I've given above, I do not uphold Mr and Mrs L's complaint against Shawbrook Bank Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L and Mrs L to accept or reject my decision before 9 July 2025.

Andrew Anderson
Ombudsman