DRN-4641156

The complaint

Mr and Mrs M'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

In February 2017, prior to the events now being complained about, Mr and Mrs M purchased from a timeshare provider (the 'Supplier'), a type of 'Trial' membership which lasted a short time.

Subsequent to this, they followed up by upgrading and purchasing a points-based 'Fractional Club' timeshare membership from the same Supplier and they borrowed £8,909 to fund this purchase. At the time, the Fractional Club[1] was the Supplier's points-based timeshare that allowed members to acquire points that they could use in various different ways to reserve holidays and Mr and Mrs M acquired 1,200 points through this purchase.

Neither the above Trial nor Fractional Club purchases are subjects of this particular complaint, although as I'll explain more about later, their circumstances are somewhat relevant to what later happened.

The events now being complained about relate to a sale on 8 October 2019. Whilst on holiday using their Fractional Club membership (above), Mr and Mrs M agreed to go to a sales event where they ultimately upgraded to a new type of timeshare brand with the same Supplier, known as The Signature Collection[2]. This type of membership had certain key similarities to their existing Fractional Club membership. For example, it was asset backed, which meant it gave Mr and Mrs M 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 ended. But, unlike the previous arrangement, the Signature Collection gave them a guaranteed week's accommodation in an Allocated Property and certain other enhanced holidaying accommodation and experiences.

So here, Mr and Mrs M entered into an agreement with the Supplier to upgrade to the Signature Collection and buy 2,000 Signature Collection points at a further cost of £8,909 (the 'Purchase Agreement'). But after trading-in their existing Fractional Club timeshare points and membership, they ended up paying a total of £24,509 for membership of The Signature Collection, comprising a £15,600 trade-in value. They paid the remainder for their Signature Collection membership by taking finance of £17,161 from the Lender, Shawbrook Bank Limited, in their names (the 'Credit Agreement') which also consolidated their existing and outstanding Fractional Club membership loan, which had been with another loan provider, of £8,252.

[1] A fractional timeshare, as described here, is where the consumer(s) acquired a beneficial interest in a property when they became members.
[2] Described on the Purchase Agreement specifically as Monterey Royale Signature Collection.

Mr and Mrs M – using a professional representative (the 'PR') to bring their complaint – wrote to the Lender on 2 May 2023 (the 'Letter of Complaint') to complain about:

1. Misrepresentations by the Supplier at the Time of Sale giving them 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 them 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.
4. The decision to lend being irresponsible because the Lender did not carry out the right creditworthiness assessment.

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

Mr and Mrs M say that the Supplier made a number of pre-contractual misrepresentations at the Time of Sale – namely that the Supplier:

1. told them that they were buying an interest in a specific piece of "real property" when that was not true.
2. told them that Signature Club membership had a guaranteed end date when that was not true.
3. told them that Signature Club membership was an investment in that by agreeing to sign up, they would get their money back upon the property being sold, with the possibility of a profit due to rising property values.
4. told them that the Supplier's holiday resorts were exclusive to its members when that was not true.

Mr and Mrs M say that they have a claim against the Supplier in respect of one or more of the misrepresentations set out above, and therefore, under Section 75 of the CCA, they have a like claim against the Lender, who, with the Supplier, is jointly and severally liable to Mr and Mrs M.

(2) Section 75 of the CCA: the Supplier's breach of contract

Mr and Mrs M say that the Supplier breached the Purchase Agreement because there is no guarantee that they will receive their share of the net sale proceeds of the Allocated Property. They say they were also subsequently told that if they wanted a holidaying week in somewhere other than the resort nominated on the Purchase agreement, they would have to pay a €400 fee. They allege this wasn't made clear to them during the Signature Collection sale.

As a result of the above, Mr and Mrs M say that they have a breach of contract claim against the Supplier, and therefore under Section 75 of the CCA, they have a like claim against the Lender, who, with the Supplier, is jointly and severally liable to Mr and Mrs M.

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

The Letter of Complaint set out several reasons why Mr and Mrs M say that the credit relationship between them and the Lender was unfair to them under Section 140A of the CCA. In summary, they include the following:

1. The way in which Signature Club membership was marketed and sold to them.
2. The contractual terms setting out (i) the duration of their Signature Club membership and / or (ii) the obligation to pay annual management charges for the duration of their membership were unfair contract terms under the Unfair Terms in Consumer Contracts Regulations 1999 (the 'UTCCR').
3. The Supplier's sales presentation at the Time of Sale included misleading actions and / or misleading omissions under the Consumer Protection from Unfair Trading Regulations 2008 (the 'CPUT Regulations') as well as a prohibited practice under Schedule 1 of those Regulations.
4. The decision to lend was irresponsible because the Lender didn't carry out the right creditworthiness assessment.
5. The Supplier failed to provide accurate information in relation to the Signature Collection's ongoing costs.

The Lender dealt with Mr and Mrs M's concerns as a complaint and has rejected it on every ground.

Mr and Mrs M then referred the complaint to the Financial Ombudsman Service. It was assessed by an Investigator who thought that the Supplier had marketed and sold The Signature Club membership as an investment to Mr and Mrs M at the Time of Sale in breach of Regulation 14(3) of the Timeshare Regulations. Given the impact of that breach on their purchasing decision, our Investigator concluded that the credit relationship between the Lender and Mr and Mrs M was rendered unfair to them for the purposes of section 140A of the CCA.

The Lender 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 set out in an appendix which I have previously supplied to both parties.

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.

I issued a Provisional Decision (PD) about this complaint on 22 July 2025. In my PD, I said it was my intention to uphold Mr and Mrs M's complaint because the Supplier had marketed and sold Signature Collection membership as an investment to Mr and Mrs M in breach of Regulation 14(3) of the Timeshare Regulations. Although I comprehensively set out my

reasoning, I essentially agreed that, given the impact of that breach on their purchasing decision, the credit relationship between the Lender and Mr and Mrs M was rendered unfair to them for the purposes of section 140A of the CCA.

Mr and Mrs M accepted my PD and have nothing further to add. But Shawbrook Bank Limited, the Lender, sent in a large number of points disagreeing with what I'd said and asking that I reconsider upholding Mr and Mrs M's complaint. I'm grateful to both parties for their responses. I have considered them and once again looked into all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

Having considered all elements of the case with care, I still think that this complaint should be upheld because I'm satisfied the Supplier breached Regulation 14(3) of the Timeshare Regulations by marketing and / or selling Signature Collection membership to Mr and Mrs M as an investment. In the circumstances of this complaint, I'm satisfied this rendered the credit relationship between them and the Lender unfair for the purposes of Section 140A of the CCA.

I am therefore now upholding Mr and Mrs M's complaint. This is my Final Decision.

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

Having considered the entirety of the credit relationship between Mr and Mrs M and the Lender along with all of the circumstances of the complaint, I 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 Supplier's sales and marketing practices at the Time of Sale – which includes training material that I think is likely to be relevant to the sale; and
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 all its circumstances.

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

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

For good order, I should at this stage clarify that although Mr and Mrs M make complaint points in various places to buying "fractional" property, I'm satisfied that all their references relate to the later sale (i.e. being sold the Signature Collection membership in October 2019).

I mention this only because the Signature Collection did have similarities to their existing Fractional Club in that it involved owning a fractional element which could evidently be sold after around 19 years[3]. But Mr and Mrs M have been clear that no complaint is being made about their former Fractional Club membership; and the focus of their complaint is the Signature Collection. I've also noted that their recollections, as outlined in their witness statement, refer to them being told there was an important investment element in what they were being sold – and this was specifically referring to the events of 8 October 2019; in other words the Signature Collection sale event.

[3] It's my understanding that this 19-year period could sometimes be *between* 16-19 years (or very similar to).

The Lender does not dispute, and I am satisfied too, that Mr and Mrs M's Signature Collection 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 Mr and Mrs M say that the Supplier did exactly that at the Time of Sale – saying the following in their initial letter of complaint via their PR:

> *"Our clients … entered into the Scheme in reliance of the following statement made by* [the Supplier's] *company's sales representative in the course of the Sales Presentation: That the scheme was an "investment".*
>
> *This statement was conveyed to our clients using the words set out above and / or the following words or phrases on their own or in combination: "Investment" in the context of getting their money back at the end of the term. Also, as property prices always go up, our clients might even make a profit."*

Further to this, in a witness statement signed by Mr and Mrs M on 22 November 2023, they say they were told by the Supplier at the Time of Sale that in buying Signature Collection membership, they were buying shares (fractions) in a property which would be sold after 19 years. The proceeds would then be split between the owners. As I've said above, they also allege that they were told that as property always tended to go up in value, they would make a profit, repeating again that they were told this was an investment.

Mr and Mrs M allege, therefore, that the Supplier breached Regulation 14(3) at the Time of Sale because:

(1) There were two aspects to their Signature Club membership: holiday rights and a profit on the sale of the Allocated Property.

(2) they were told by the Supplier that they would get their money back or more during the sale of Signature Club membership.

(3) they were told by the Supplier that Signature Club membership was the type of investment that would only increase in value.

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 M's share in the Allocated Property clearly contained an investment element 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 the Signature Collection 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 Signature Collection membership was indeed marketed or sold to Mr and Mrs M 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 Signature Collection membership offered them the prospect of a financial gain - a profit - given the facts and circumstances of this complaint. I have carefully considered the facts and evidence available which include:

- witness evidence and testimony about the circumstances of the sale;
- investment disclaimers I've seen were contained within the documentation and which Mr and Mrs M signed; and
- the Supplier's Signature Collection sales training materials from the time.

Mr and Mrs M say they were in Tenerife in 2019, using their Fractional Club points and whilst there, they were invited to a timeshare presentation from the same Supplier to discuss their existing Fractional Club membership and the possibility of improving it. On the 8 October, they were collected from their apartment by one of the Supplier's sales representatives and taken for a complimentary breakfast. After this, they were taken by car on a tour of the Supplier's resorts and then driven to a sales suite where, in fact, a lengthy sales presentation began. It seems that this sought to get Mr and Mrs M to agree to buying an upgrade to their existing membership. They say they were shown slides and videos showing that if they upgraded to another fractional product – which we now know was the Signature Collection - they would get more points, a better choice of holidays, superior services, and better availability. Mr and Mrs M say that after several hours and based on what they had been shown and told, they agreed to trade-in their existing Fractional Club membership for the Signature Collection.

As I'll go on to explain, I think Mr and Mrs M's testimony about what happened reflects the type of sales pitch they most likely experienced during that October 2019 event. We've since obtained the relevant sales training material which I think the Suppliers' sales advisers would have followed at that time. I've noted this material contained many broad similarities to the agenda for the day and the events which unfolded, according to what Mr and Mrs M describe.

Nevertheless, I do also accept that there is evidence in this complaint that the Supplier made some efforts to avoid specifically describing any form of fractional membership as an investment, or quantifying to prospective purchasers, 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.

There was, for instance, a disclaimer in the contemporaneous paperwork that stated that fractional membership was not sold to Mr and Mrs M as an investment. For example, the Purchase Agreement was entitled: *Member's Declaration (Fractionals at* [the Supplier's] *Signature Collection).* This read as follows: *"We understand that the purchase of our Fraction is for the primary source 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 Fractional right which are personal Rights and not interests in real estate".* I have noted that Mr and Mrs M signed to say they understood this.

However, weighing up what happened in practice is, in my view, rarely as simple as looking at the contemporaneous paperwork. There are a number of strands to Mr and Mrs M's case

that the Supplier *did* breach Regulation 14(3) during the sale, including that membership of the Signature Collection (which contained fractional ownership rights) could make them a financial gain and / or would retain or increase in value. So, with this in mind I considered:

- whether it's more likely than not that the Supplier, sold or marketed membership of the Signature Collection as an investment as per the allegations Mr and Mrs M have made, i.e., it told Mr and Mrs M or led them to believe during the marketing and / or sales process that this type of Fractional membership was an investment and / or offered them the prospect of a financial gain (i.e. a profit); *and, in turn*
- whether the Supplier's actions constitute a breach of Regulation 14(3).

And for reasons I'll now come on to, given all the facts and circumstances of this complaint, I think the answer to both of these questions is 'yes'.

How the Supplier marketed and sold the Fractional Club membership

Over the course of the Financial Ombudsman Service's work on complaints involving Fractional timeshare sales, the Supplier provided written and visual training material housed in a document called *"2015 SPAIN FRACTIONALS AT SIGNATURE SUITE COLLECTION SALES TRAINING MANUAL FOR FPOC[4] AND VACATION CLUB OWNERS"* ('the Manual'). Although this document was put together in 2015, the Supplier has not provided any further training material that was used to sell this product between then and the Time of Sale. The Manual contains a number of slides that would have been shown to prospective customers alongside notes and directions, telling sales staff how to present these slides and Fractional Club membership

Based on all the evidence available in this complaint, I cannot say for certain whether Mr and Mrs M would have been shown all of these specific slides within this induction training Manual. However, it seems to me that the whole purpose of a document entitled as this was, was to frame a sales presentation to potential clients who were in precisely the situation Mr and Mrs M were in, namely that they were prospective customers of *"FRACTIONALS AT SIGNATURE SUITE COLLECTION."* In this context, I think it's reliable to assume that this induction training Manual was used by the person attempting to sell the Signature Collection membership to Mr and Mrs M. That was the purpose of the document and it's time of issuance covers the period of Mr and Mrs M's purchase.

Corroborating this, Mr and Mrs M also present recollections of attending *"a presentation".* Overall, therefore, the written prompts and visual slides in the manual seem to me to reflect the training the Supplier's sales representatives would have most probably got before selling any Fractional membership and, in turn, how they would have probably framed this type of 'upgraded' sale of the Signature Collection, especially to existing Fractional Club members.

Having studied and considered the Manual closely, it is, in my view, reasonably indicative of: the training the Supplier's sales agent would have got before selling Mr and Mrs M's Signature Collection membership; and how the sales agent would have framed the sale of that membership to them.

The first thing I observed in relation to this training material was that the proposed agenda planned for the presentation event, as shown at the start of the above document, was broadly consistent with Mr and Mrs M's recollections of what happened. This included things like breakfast and a tour, which may at first sight seem a trivial observation. But I've noted a consistent theme from the Lender in this case which seriously questions the overall credibility of Mr and Mrs M's recollections, not least because their complaint was only raised

[4] FPOC means Fractional Property Owners Club

in 2023, several years after the sale. However, whilst I do understand the point being made, I think these basic recollections of the proposed agenda for the actual events 'on the day' do provide some guarantee that Mr and Mrs M's testimony is certainly not without its merit – what they remember does seem to me to be consistent with the agenda for the day.

Moving on, the "Game Plan" on page 4 of the Manual sets out what the salesperson was to cover when selling memberships. This covered the basic Fractional Club membership even though I think Mr and Mrs M would have had an existing understanding of what owning a 'fraction' meant. The slides then go on to other areas such as the membership they were being targeted to buy – the Signature Collection – as being the *"NEWEST LEVEL OF LUXURY"*. And the training material also said that "*at the end of 19 years the property will be sold to give you some money back*."

I am further drawn to the slide on page 11, which covers the Fractional membership and its purpose. This slide asks the sales agent to *"set the scene"* by summarising the key events in the Supplier's history to date. It says:

> *"In recent years our members requested shorter term products so to fulfil that demand we created our Fractional Property Owners Club which is a shorter-term product with a fixed asset attached providing an exit in 19 years and money back".*

To me, this shows the sales agent is likely to have used this framework to have made the point to the customer(s) that purchasing any fractional membership would allow them to own a physical asset - that being the fraction of a real property - and that this type of ownership would lead to *"money back*" at the end of the term. So, this would have been highlighted from the outset of the sales event, and in my view, this is once again broadly consistent with what Mr and Mrs M say they were told.

In the set of slides contained in the Manual, the section that explained how the returns from Fractional Club membership worked was in a section titled *"PRESENTATION FOR VACATION CLUB OWNERS"*. However, Mr and Mrs M were not Vacation Club owners but existing Fractional Club members at the Time of Sale, so they may not have been shown these slides. But I think these slides are indicative of the sales practices taught by the Supplier at that time. On page 106, there is a slide that reads:

"Vacation Club	*CLC Estates*
Choice 1	*Choice 2*
Choice/flexibility	*Investment*
130 resorts	*Quality Guarantee*
Mini-breaks	*Use/sell*
Lodges	*Money back*
Cruises	
Hotels	
Ends 2078	*Large capital outlay*
Re-sale value?	*Fixed location*
Investment in holidays	*Not flexible"*

I think this slide compares the features between two of the Supplier's products – Vacation Club, which was a traditional timeshare product with no 'fractional' element - and CLC Estates, which was set up for customers to buy an overseas property and then 'rent' it back to the Supplier for an income. The next slide reads:

"Vacation Club
Choice 1

CLC Estates
Choice 2

We thought there should be a 3RD CHOICE
Club La Costa Fractional Owners Property Club
Have the BEST OF BOTH WORLDS

Choice/flexibility
130 resorts
Mini-breaks
Lodges
Cruises
Hotels"

Investment
Quality Guarantee
Use/sell
Money back

So, the word 'investment' was used when describing Fractional Club membership to existing Vacation Club members. Although I accept it's possible that this part of the slide deck was not shown to Mr and Mrs M, I think this demonstrates that it was likely that the Supplier's sales staff would have been trained to talk about memberships like Mr and Mrs M's as investments, at the Time of Sale. So, I think it was a real possibility that a sales representative who used that language when selling to existing Vacation Club members would use the same or similar language when selling to existing Fractional members. That means there was a real possibility that was done in this sale.

I acknowledge that there was no comparison between the expected level of financial return and the purchase price of the Signature Collection membership in the manual. However, if I were to only concern myself with express efforts to quantify the financial value of the proprietary interest Mr and Mrs M were offered, I think that would involve taking too narrow a view of the prohibition against marketing and selling timeshares as an investment in Reg.14(3).

When the Government consulted on the implementation of the Timeshare Regulations, it discussed what marketing or selling a timeshare as an investment might look like – saying that *'[a] trader must not market or sell a timeshare or [long-term] holiday product as an investment. For example, there should not be any inference that the cost of the contract would be recoupable at a profit in the future (see regulation 14(3))".*[5] And in my view that must have been correct because it would defeat the consumer-protection purpose of Regulation 14(3) if the concepts of marketing and selling a timeshare as an investment were interpreted too restrictively.

So, if a supplier *implied* to consumers that future financial returns (in the sense of possible profits) from a timeshare were a good reason to purchase it, I think its conduct was likely to have fallen foul of the prohibition against marketing or selling the product as an investment.

Indeed, if I'm wrong about that, I find it difficult to explain why, in paragraphs 77 and 78 followed by paragraph 100 of Shawbrook & BPF v FOS when, Mrs Justice Collins Rice said the following:

"[…] I endorse the observation made by Mr Jaffey KC, Counsel for BPF, that, whatever the position in principle, ***it is apparently a major challenge in practice for timeshare companies to market fractional ownership timeshares consistently with Reg.14(3). […] Getting the governance principles and paperwork right may not be quite enough.***

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[5] The Department for Business Innovation & Skills *"Consultation on Implementation of EU Directive 2008/122/EC on Timeshare, Long-Term Holiday Products, Resale and Exchange Contracts (July 2010)".* https://assets.publishing.service.gov.uk/media/5a78d54ded915d0422065b2a/10-500-consultation-directive-timeshare-holiday.pdf

The problem comes back to the difficulty in articulating the intrinsic benefit of fractional ownership over any other timeshare from an individual consumer perspective*. […]* ***If it is not a prospect of getting more back from the ultimate proceeds of sale than the fractional ownership cost in the first place, what exactly is the benefit?*** *[…] What the interim use or value to a consumer is of a prospective share in the proceeds of a postponed sale of a property owned by a timeshare company – one they have no right to stay in meanwhile – is persistently elusive."*

"[...] although the point is more latent in the first decision than in the second, it is clear that both ombudsmen viewed fractional ownership timeshares – simply by virtue of the interest they confer in the sale proceeds of real property unattached to any right to stay in it, and the prospect they undoubtedly hold out of at least 'something back' – as products which are inherently dangerous for consumers. ***It is a concern that, however scrupulously a fractional ownership timeshare is marketed otherwise, its offer of a 'bonus' property right and a 'return' of (if not on) cash at the end of a moderate term of years may well taste and feel like an investment to consumers who are putting money, loyalty, hope and desire into their purchase anyway.***

Any timeshare contract is a promise, or at the very least a prospect, of long-term delight. [...] A timeshare-plus contract suggests a prospect of happiness-plus. And a timeshare plus 'property rights' and 'money back' suggests adding the gold of solidity and lasting value to the silver of transient holiday joy."

Having considered the manual in the round, I note that there does not appear to be any attempt to minimise or explicitly reject the notion that a fractional type of membership contained an investment element. Nor have I seen anything that contradicts or clashes with what Mr and Mrs M have said about the way the membership was sold. Given this, I think it's more likely than not that the Supplier did, at the very least, imply that future financial returns (in the sense of possible profits) from the membership were a good reason to purchase it. I recognise that the manual is mainly taken up with explaining and selling the additional benefits of the Signature Collection membership, namely the more luxurious nature of the accommodation and the services apparently on offer to members. However, I also don't think this contradicts Mr and Mrs M's position that they were told they would make a profit from this type of upgraded membership.

I have also considered the likely approach taken by the sales staff together with the position which Mr and Mrs M found themselves in as of October 2019. Because Mr and Mrs M already enjoyed some fractional rights, how likely would it be for them to just give these up? They were paying more money – and so I think it's unlikely Mr and Mrs M would have ever agreed to trade part of their existing Fractional Club product – including the so-called investment element – for the Signature Collection membership, if they hadn't been persuaded by the Supplier that they would at least retain that same investment element, if not more. And this is consistent with Mr and Mrs M's general testimony which is basically that whilst enhanced holidaying experiences and accommodation standards were achieved by upgrading, a more prominent feature was the underpinning provided by having an investment share, which was marketed and sold to them by the Supplier at the sale event.

Having considered the Manual, Mr and Mrs M's memories, their existing 'situation', and all of the other evidence from the time of sale, I think it's much more likely than not that the sales representative is likely to have led them to believe that membership of the Signature Collection with Fractional rights was an investment that may lead to a financial gain (i.e., a profit) in the future. With that being the case, I do not find Mr and Mrs M either implausible or hard to believe when they said they thought they were buying an investment and that, *"we were told fractional property ownership was an investment".* And also told, *"as property prices always tended to go up, we might even make a profit"*. Therefore, in the absence of

evidence to persuade me otherwise, I think that is likely to be what Mr and Mrs M were led by the Supplier to believe at the relevant time.

For that reason, I think the Supplier breached Reg.14(3) of the Timeshare Regulations.

Was the credit relationship between the Lender and the Consumer rendered unfair?

Having found 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 and Mrs M and the Lender under the Credit Agreement and related Purchase Agreement.

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.

It also seems to me in light of *Carney* and *Kerrigan* that, if I am to conclude that a breach of Regulation 14(3) led to a credit relationship between Mr and Mrs M and the Lender that was unfair to them and warranted relief as a result, whether the Supplier's breach of Regulation 14(3) led them to enter into the Purchase Agreement and the Credit Agreement is an important consideration.

On my reading of Mr and Mrs M's testimony, the prospect of a financial gain from the continued Fractional membership - via the upgrade to the Signature Collection - was an important, motivating and decisive factor when they decided to go ahead with their purchase. That doesn't mean they were not interested in holidays and the enhancements the Signature Collection might have had on their holidaying experiences; their own testimony demonstrates that they quite clearly were. And that is not surprising given the nature of the product at the centre of this complaint. However, having considered all the evidence in this case, I think the holidaying features were secondary to the investment possibilities, particularly as Mr and Mrs M already enjoyed a type of fractional membership at the point of this upgrading and sale, in October 2019. In my view, they would be very unlikely to want to give this investment element up.

Put another way, Mr and Mrs M say (plausibly in my view) that the Signature Collection membership (which had Fractional features as well as enhanced holidaying experience) was specifically marketed and sold to them at the Time of Sale as something that offered them more than just holiday rights. And on the balance of probabilities, I think their purchase was motivated by their share in the Allocated Property and the possibility of a profit as that share was one of the defining features of membership.

With that being the case, I think the Supplier's breach of Regulation 14(3) was material to the decision they ultimately made. And as they faced the prospect of borrowing and repaying a substantial (and greater) sum of money, while subjecting themselves to long-term financial commitments, I'm not persuaded that they would have pressed ahead with their purchase regardless.

It's my view that had they not been encouraged by the continuing prospect of a financial gain from membership of the Signature Collection (with the Fractional element included) – and had that marketed to them during this sale - they would never have upgraded.

Shawbrook Bank Limited's response to my PD

The Lender responded to my PD. As before, 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 same vein, whilst I recognise that there are a number of aspects to Mr and Mrs M's complaint, it isn't necessary to make formal findings on all of them.

The Lender said I'd placed too strong a reliance on the witness testimony of Mr and Mrs M when arriving at my PD. It said it found this concerning, and that since the witness testimony was vague, brief, inconsistent and included factual inaccuracies which ultimately distorted the actual events surrounding the Signature Collection membership sale, I should change my Decision.

The Lender also said I'd overstated the investment element within the sale, and the marketing and sale thereof, as being an important and motivating factor for Mr and Mrs M making their purchase. It implies, rather, that they simply loved holidays and wanted to make the most of the holiday opportunities offered by this product.

I've already explained that I had considered this issue, and to re-cap, nothing I said means that Mr and Mrs M were not interested in holidays. However, I think these interests were secondary considerations - secondary to them finding the unfair marketing and sale of the timeshare the most persuasive factors in deciding whether or not to buy. So, it was these elements upon which my PD to uphold was mainly based.

After the responses to my PD and upon my re-consideration of Mr and Mrs M's testimony, I remain firmly of the view that it was the prospect of a financial gain from their Signature Collection membership which was the important and motivating factor when they decided to go ahead with their purchase. I also reject the Lender's view of there being no supporting contemporaneous evidence to support taking this line. As I've said, the Supplier's sales representatives were encouraged to make prospective members consider the advantages of owning something like this and view membership as an opportunity to build equity in an allocated property, rather than simply paying for holidays in the usual way. This was reinforced in sales presentations. As I explained, the Training Manual suggests that much would have been made of the possibility of prospective members maximising their returns.

In response to my PD, Shawbrook Bank Limited also said that Mr and Mrs M's testimony included factual inaccuracies and was essentially prepared *for* them, rather than *by* them, probably by their representative rather than being the customer's genuine recollections.

I do understand the points being made and I agree there were aspects of the PR's letter of complaint which broadened out Mr and Mrs M's allegations and sought to put them into a formal complaint setting, with more legal language for example. However, one important aspect I took particular note of is that Mr and Mrs M were attempting to recall events from several years before. So, that there were *some* inconsistencies, and indeed *some* (less important) facts that we can now challenge, overall I rightly focussed on what I considered to be the *more* important and *main* issues. In my view, Mr and Mrs M's most persuasive testimony was their allegation of a breach of Regulation 14(3) because the product was sold / marketed as an investment. In the overall circumstances I found this plausible and supported by wider information including the knowledge we have of the training and sales material that was commonly used during these particular sales events at the relevant time.

So, whilst I do note there were some inconsistencies along the way, I do not find that these materially change my view. From my own experience, I find that certain inconsistencies in evidence are a normal part of someone trying to remember what happened in the past. So, I am not surprised that there are some variations between what Mr and Mrs M said happened and what other evidence shows. The question to consider, is whether there is a core of acceptable evidence from Mr and Mrs M that the inconsistencies have little to no bearing on the outcome. And just because Mr and Mrs M don't remember every single detail about the sale or product, this doesn't necessarily mean I must discount the rest of their testimony.

I will focus on four more specific examples raised by the Lender to further demonstrate my general approach to this upheld Final Decision. The first relates to Shawbrook Bank Limited's response about when Mr and Mrs M acquired the Signature Collection membership and disposed of the Fractional membership. It said that in doing this, their 'fraction' of the Allocated Property at this point effectively reduced from a 0.97% share to a 0.82% share. The point the Lender is making, I think, is that any *"reasonable person"* would have questioned such a reduction, if considering investment as the most relevant purchasing rationale. However, this was a detailed and, in my view, a relatively marginal point which would have required a keen eye for detail. And of course, any percentage reduction does not in itself mean the overall monetary share would reduce (if the eventual overall sale price of the Allocated Property, say in 2035, was greater for the Signature Collection, than it might have been for the original and less attractive Fractional Club property). But in any event, whether or not this detailed issue was discussed – or if I might say even noticed by either party – during the sale, doesn't materially matter to whether or not there was a breach of Reg. 14(3).

I have also considered the point made that Mr and Mrs M have evidently chosen to buy a timeshare on three out of the four occasions they sat through a presentation from the Supplier over a period of a few years – the Lender says this shows this *"clearly evidences that they liked timeshare products"*. However, this once again doesn't mean that the Signature Collection wasn't marketed / sold in breach of Regulation 14(3) in 2019. I have also acknowledged that Mr and Mrs M no doubt enjoyed holidays – but these two issues aren't mutually exclusive.

Thirdly, I take note of what the Lender says about the sales notes and periodic contact notes recorded by the Supplier when it and Mr and Mrs M came into direct contact with one another. I think it's fair to summarise much of what the Lender says as there being no references to investment or investing in these notes: the point being the absence of any investment discussions perhaps being persuasive that no such subject was ever discussed. But I think this is a moot point, as it would be highly unlikely, in my view, for any sales agent or call handler employed by the Supplier to note down or electronically record such investment related issues. That's because they would have probably known that anything akin to selling or marketing these types of sale was in direct contravention of the Timeshare Regulations – and therefore ought not to be recorded in documents which could be reviewed at a later date. In short, the absence of any investment discussions on the sales notes (or similar) is certainly not a powerful or persuasive point here, or one which should cause me to now reject the complaint in the face of other much more persuasive evidence

That leaves one final area raised by Shawbrook Bank Limited which is worthy of comment – and this is in relation to my interpretation of the relevant law. Put simply, it asserts that I have mis-interpreted the law and used inappropriate tests. However, I feel I have already covered this area in great detail, and I have systematically set out my findings above; there's simply no value in me repeating what I've said. Suffice to say, I have re-considered all the response points to my PD in this regard, and I don't think I have made the legal interpretation errors alleged. I am satisfied with my Decision; I have set out the law and correctly applied it.

I have fully considered the points made by Shawbrook Bank Limited. However, I continue to find Mr and Mrs M's testimony persuasive and as I've set out in some considerable detail, I was not persuaded by one document or factor *alone*.

Conclusion

Given the facts and circumstances of this complaint, I think the Lender participated in and perpetuated an unfair credit relationship with Mr and Mrs M under the Credit Agreement and related Purchase Agreement for the purposes of Section 140A. And with that being the case, taking everything into account, I think it is fair and reasonable that I uphold this complaint.

Putting things right

Having found that Mr and Mrs M would not have agreed to purchase Fractional Club membership at the Time of Sale, were it not for the breach of Regulation 14(3) of the Timeshare Regulations by the Supplier (as deemed agent for the Lender). And the impact of that breach meaning that, in my view, the relationship between the Lender and the Consumer(s) was unfair under section 140A of the CCA, I think it would be fair and reasonable to put them back in the position they would have been in had they not purchased the Fractional Club membership (i.e., not entered into the Purchase Agreement), and therefore not entered into the Credit Agreement. This is provided Mr and Mrs M agree to assign to the Lender their Fractional Points or hold them on trust for the Lender if that can be achieved (if still relevant).

As I've explained, Mr and Mrs M were existing Fractional Club members ("FC Membership 1") and their membership was traded-in against the purchase price of the Signature Collection membership in question ("FC Membership 2").

Under FC Membership 1, they had 1,200 Fractional Points. And, like FC Membership 2, they had to pay annual management charges as part of FC Membership 1. So, had Mr and Mrs M not purchased FC Membership 2, they would have always been responsible to pay an annual management charge of some sort. With that being the case, any refund of the annual management charges paid by Mr and Mrs M from the Time of Sale as part of FC Membership 2 should amount only to the difference between those charges and the annual management charges they would have paid as part of FC Membership 1.

I am conscious that, under FC Membership 1, Mr and Mrs M were entitled to a share in an allocated property. My understanding of their situation is that Mr and Mrs M do not want reinstatement into that earlier membership, so I make no direction on that issue.

So, here's what I think needs to be done to compensate Mr and Mrs M with that being the case – whether or not a court would award such compensation:

(1) The Lender, Shawbrook Bank Limited should refund Mr and Mrs M's repayments to it under the Credit Agreement, including any sums paid to settle the debt, and cancel any outstanding balance if there is one.

(2) In addition to (1), Shawbrook Bank Limited should also refund the difference between the annual management charges paid after the Time of Sale under FC Membership 2 and what Mr and Mrs M's annual management charges would have been under FC Membership 1 had they not purchased FC Membership 2.

(3) Shawbrook Bank Limited can deduct:

    i. The value of any promotional giveaways that Mr and Mrs M used or took

advantage of; and

ii. The market value of the holidays* Mr and Mrs M took using FC Membership if their annual management charge for the year in which the holidays were taken was more than the annual management charge they would have paid as an ongoing FC Membership 1 member. However, the deduction should be a proportion equal to the difference between those annual management charges. And if any of Mr and Mrs M's FC Membership 1 annual management charges would have been higher than their equivalent FC Membership 2 annual management charges, there should not be a deduction for the market value of any holidays taken using Fractional Points in the years in question as they could have taken those holidays as an ongoing FC Membership 1 member in return for the relevant annual management charge

(I'll refer to the output of steps 1 to 3 as the 'Net Repayments' hereafter)

(4) Simple interest** at 8% per annum should be added to each of the Net Repayments from the date each one was made until the date the Lender settles this complaint.

(5) Shawbrook Bank Limited should remove any adverse information recorded on Mr and Mrs M's credit file(s) in connection with the Credit Agreement reported within six years of this decision.

(6) If Mr and Mrs M's Fractional Club membership is still in place at the time of this decision, as long as they agree to hold the benefit of their interest in the Allocated Property for the Lender (or assign it to the Lender if that can be achieved), the Lender must indemnify them against all ongoing liabilities as a result of their Fractional Club membership.

**I recognise that it can be difficult to reasonably and reliably determine the market value of holidays when they were taken a long time ago and might not have been available on the open market. So, if it isn't practical or possible to determine the market value of the holidays Mr and Mrs M took using their Fractional Points, deducting the relevant annual management charges (that correspond to the year(s) in which one or more holidays were taken) payable under the Purchase Agreement seems to me to be a practical and proportionate alternative in order to reasonably reflect their usage.*

***HM Revenue & Customs may require the Lender to take off tax from this interest. If that's the case, the Lender must give the consumer a certificate showing how much tax it's taken off if they ask for one.*

My final decision

I uphold Mr and Mrs M's complaint

I direct Shawbrook Bank Limited to compensate them in line with what I've set out above under the heading "Putting Things Right".

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M and Mrs M to accept or reject my decision before 18 September 2025.

Michael Campbell
Ombudsman