DRN-5177685

The complaint

Mr C's complaint is, in essence, that Clydesdale Financial Services Limited trading as Barclays Partner Finance (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 claims under Section 75 of the CCA.

What happened

Mr C had an existing timeshare membership as he had previously made multiple purchases of a type of membership (referred to here as the 'Fractional Club') from a timeshare provider (the 'Supplier') and held 3,400 fractional points.

Fractional Club membership, in addition to providing holiday rights, was asset backed – which meant it gave members such as Mr C a share in the net sale proceeds of a property named on their purchase agreement. But members had no preferential rights to stay in the named property or use it in any other way.

In 2015, Mr C made a separate purchase of another type of membership from the Supplier (the 'Signature Collection') and acquired 1,420 points. The Signature Collection membership, like the Fractional Club, was also asset backed – it included a share in the net sale proceeds of a property named on his purchase agreement after his membership term ends. But membership of the Signature Collection was a little different to Fractional Club in that members also had preferential rights to stay in the Allocated Property, and the property was said to be more luxurious. These Fractional Club and Signature Collection purchases are not the subject of this complaint and are included here for background information only.

Mr C then traded in 1,700 of his existing Fractional Club points towards an additional purchase of a further week's Signature Collection membership from the Supplier on 23 May 2016 (the 'Time of Sale'). He entered into an agreement with the Supplier to buy a further 1,420 fractional points at a cost of £31,739 (the 'Purchase Agreement'). But after trading in, he ended up paying £9,639 for his further week of Signature Collection membership. And as before, Signature Collection membership included a share in the net sales proceeds of the property named on his Purchase Agreement (the 'Allocated Property') after his membership term ends.

Mr C paid for this Signature Collection membership by taking finance of £16,646 from the Lender in his sole name (the 'Credit Agreement'). This consolidated his previous lending for his previous purchase.

Mr C – using a professional representative (the 'PR 1') – wrote to the Lender on 2 August 2018 (the 'Letter of Complaint 1') to complain about:

1. Misrepresentations by the Supplier at the Time of Sale giving him 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 him 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.

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

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

1. Told him that every time he booked a holiday he could reside in the suite he was shown originally at the Time of Sale, but this was untrue.
2. Implied to him that the product was tailored to his needs and specifications, but this was untrue.
3. Gave him inaccurate information about the product.

Mr C says that he has 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, he has a like claim against the Lender, who, with the Supplier, is jointly and severally liable to Mr C.

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

Mr C says that he found it difficult to book the holidays he wanted, when he wanted.

Mr C also suggests that the Supplier breached the Purchase Agreement because there is no guarantee that he will receive his share of the net sale proceeds of the Allocated Property.

Although not expressed in these exact terms, on my reading of the Letter of Complaint 1, Mr C suggests that as a result of the above that he has a breach of contract claim against the Supplier, and therefore, under Section 75 of the CCA, he has a like claim against the Lender, who, with the Supplier, is jointly and severally liable to Mr C.

(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 C suggests that the credit relationship between him and the Lender was unfair to him under Section 140A of the CCA. In summary, they include the following:

1. He was pressured into purchasing Signature Collection membership by the Supplier.
2. The decision to lend was irresponsible because the Lender didn't carry out the right creditworthiness assessment and they didn't consider Mr C's age at the Time of Sale.
3. His annual management charges have substantially increased.
4. The Supplier failed to ensure compliance and due diligence and failed in their duty of care to Mr C.
5. The Supplier failed to provide sufficient information to allow Mr C to make an informed decision.

The Lender dealt with Mr C's concerns as a complaint and issued its final response letter on 7 September 2018, rejecting it on every ground.

Mr C then referred the complaint to the Financial Ombudsman Service. In early 2019, Mr C appointed a new PR (the 'PR 2'), who sent a new letter of complaint (the 'Letter of Complaint 2') to the Lender on 20 February 2019. In this letter, the following new points were raised (in addition to those raised previously):

- He was told by the Supplier that the only way to get out of his existing membership was to purchase fractional membership.
- The product was sold to him as an investment, so he agreed to purchase it due to this and the reduction in maintenance fees.
- There is a lack of exclusivity.

It was assessed by an Investigator who, having considered the information on file, rejected the complaint on its merits.

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

At this stage, the PR 2 added an additional point of complaint which was that, in their view, the membership was a collective investment scheme ('CIS') which the Supplier did not have the relevant authorisation to sell. So, they said this was another reason why the credit relationship was unfair under Section 140A of the CCA.

I considered the matter and issued a provisional decision on 13 November 2024. In that decision I said:

"***Section 75 of the CCA***

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 C could make against the Supplier.

Certain conditions must be met if the protection afforded to consumers is engaged. One of these is the price of the goods or service. The purchase price must be more than £100 but no more than £30,000.

In this case, I can see that the purchase price here prior to the trade-in at the Time of Sale was £31,739 i.e., over £30,000. As it is the purchase price of the product or service that needs to be taken into account, and the purchase price for the sale here was in excess of £30,000, a claim under Section 75 relating to the purchase cannot succeed.

But where the purchase price is in excess of £30,000, a claim can be considered under Section 75A of the CCA. But a claim under Section 75A can only relate to a 'breach of contract' – misrepresentation isn't included. Looking at Mr C's claim I am satisfied it includes elements which are an alleged breach of contract, so this could potentially be considered under Section 75A. Namely, his concerns relating to availability, exclusivity and the sale of the Allocated Property.

There are other criteria in order for Section 75A to apply, but I don't consider that I need to make a finding on that because, as I go on to explain below, whether it be under Section 75 or 75A, I do not think that the Lender was unfair or unreasonable when it rejected Mr C's claim.

Mr C has said he could not holiday where and when they wanted to due to issues with availability. On my reading of the complaint, this suggests that he considers that the Supplier was not living up to its end of the bargain and had breached the Purchase Agreement. Like any holiday accommodation, availability was not unlimited – given the higher demand at peak times, like school holidays, for instance. I can also see that some of the sales paperwork signed by Mr C states that the availability of holidays was/is subject to demand. And, I can see from his reservation history that he took four holidays with his membership from the Time of Sale onwards until his membership was suspended in 2018 due to non-payment of management fees.

I accept that he may not have been able to take certain holidays. But I have not seen enough to persuade me that the Supplier had breached the terms of the Purchase Agreement.

Mr C has also said there was a lack of exclusivity, given the fact that the Supplier's resorts were open to be booked by people who weren't members. But, while those who weren't members might have been able to holiday at the Supplier's resorts, I can't see that this meant Mr C didn't receive what he was entitled to as a member under the Purchase Agreement.

Lastly, Mr C also says that the Supplier breached the Purchase Agreement because there is no guarantee that he will receive his share of the net sale proceeds of the Allocated Property. I understand that he's saying that he fears that, when the time comes for the Allocated Property to be sold, he will not receive his share of the sales proceeds. However, it would seem that any breach of contract (if that occurs) lies in the future and is currently uncertain.

For these reasons, therefore, I do not think the Lender is liable to pay Mr C 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 75 and/or Section 75A claim in question.

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

Mr C also says that the credit relationship between him and the Lender was unfair under Section 140A of the CCA, when looking at all the circumstances of the case, including parts of the Supplier's sales process at the Time of Sale that he has concerns about. It is those concerns that I explore here.

As Section 140A of the CCA is relevant law, I do have to consider it. So, in determining what is fair and reasonable in all the circumstances of the case, I will consider whether the credit relationship between Mr C and the Lender was unfair.

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 C's membership 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 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 C 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:

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;*
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; and*
4. *The inherent probabilities of the sale given its circumstances.*

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

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

Mr C's complaint about the Lender being party to an unfair credit relationship was also made for several reasons, all of which I set out at the start of this decision.

The PR says that the right checks weren't carried out before the Lender lent to Mr C. I haven't seen anything to persuade me that was the case in this complaint given its circumstances. But 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 C 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

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

for this reason. Again, from the information provided, I am not satisfied that the lending was unaffordable for Mr C. If there is any further information on this (or any other points raised in this provisional decision) that Mr C wishes to provide, I would invite him to do so in response to this provisional decision.

Mr C says that he was pressured by the Supplier into purchasing Signature Collection membership at the Time of Sale. I acknowledge that he 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 Signature Collection membership when he simply did not want to. I also note that according to the Supplier's records, Mr C initially declined to purchase, but then having considered it, returned the next day, contacting the sales team of his own volition, to complete the purchase.

He was also given a 14-day cooling off period and he has 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 C made the decision to purchase Signature Collection membership because his ability to exercise that choice was significantly impaired by pressure from the Supplier.

The misrepresentations I've described previously could also be something that led to an unfair debtor-creditor relationship[2], so I've considered what Mr C has had to say with this in mind.

Regarding the Supplier's alleged pre-contractual misrepresentations, while I recognise that Mr C has concerns about the way in which his fractional membership was sold, he hasn't persuaded me that there was an actionable misrepresentation by the Supplier at the Time of Sale for the reasons he alleges. And I say that because beyond the bare allegations, little to no evidence has been provided to support them. For example, some of the allegations are extremely vague, such as the allegation that the Supplier gave him inaccurate information about the product but with no explanation of what information is being referred to or why it wasn't accurate.

I'm not persuaded, therefore, that Mr C's 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 he now says his credit relationship with the Lender was unfair to him. And that's the more recent suggestion that Signature Collection membership was marketed and sold to him as an investment in breach of prohibition against selling timeshares in that way.

<u>Was the Signature Collection membership marketed and sold at the Time of Sale as an investment in breach of regulation 14(3) of the Timeshare Regulations?</u>

[2] See Scotland & Reast v. British Credit Trust Limited [2014] EWCA Civ 790

The Lender does not dispute, and I am satisfied, that Mr C's Signature Collection membership met the definition of a "timeshare contract" and was a "regulated contract" for the purposes of the Timeshare Regulations.

As outlined above, PR 2 has argued that the membership was a CIS and that led to an unfair credit relationship. However, as the Purchase Agreement qualified as a 'timeshare contract' for the purposes of the Timeshare Regulations (because Mr C acquired holiday rights when purchasing fractional membership), it was exempt from giving rise to a CIS (see paragraphs 39-54 in Shawbrook & BPF v FOS).

Regulation 14(3) of the Timeshare Regulations prohibited the Supplier from marketing or selling membership of the Signature Collection 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 PR 2 says that the Supplier did exactly that at the Time of Sale. So, that is what I have considered next.

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 C's share in the Allocated Property clearly, in my view, constituted an investment as it offered him the prospect of a financial return – whether or not, like all investments, that was more than what he first put into it. But the fact that 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 <u>as an investment</u>. 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 Signature Collection. They just regulated how such products were marketed and sold.

To conclude, therefore, that Signature Collection membership was marketed or sold to Mr C 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 Signature Collection membership offered him the prospect of a financial gain (i.e., a profit) given the facts and circumstances of this complaint.

There is evidence in this complaint that the Supplier made efforts to avoid specifically describing Signature Collection membership as an 'investment' or quantifying to prospective purchasers, such as Mr C, 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. There were, for instance, disclaimers in the contemporaneous paperwork that state that Signature Collection membership was not sold to Mr C as an investment.

With that said, I acknowledge that the Supplier's training material left open the possibility that the sales representative may have positioned Signature Collection membership as an investment. And while that was not alleged by either Mr C nor the PR 1 when he first complained about a credit relationship with the Lender that was unfair to him, I accept that it's possible that Signature Collection membership was marketed and sold to him 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 Signature Collection membership without breaching the relevant prohibition.

So, I have taken all of that into account. However, on my reading of the evidence provided and Mr C's initial recollections of the sales process at the Time of Sale, that is not what appears to have happened at that time. The Letter of Complaint 1 refers to Mr C receiving the net sale proceeds of his share in the Allocated Property once his membership ended. But at no point did he say or suggest that the Supplier led him to believe that his membership would lead to a financial gain (i.e., a profit).

So, while the PR 2 now argues that the Supplier marketed and sold Signature Collection membership to Mr C as an investment, in light of Mr C's more recent recollections, I don't recognise that assertion in his initial recollections of the sale.

Indeed, Mr C's initial recollections and the Letter of Complaint 1 were put together much closer to the Time of Sale and are, in my view, better evidence of what he remembers of the sales process at that time and why they were unhappy with it than his very recent recollections. After all, if Signature Collection membership had been marketed and sold as an investment by the Supplier at the Time of Sale, it is difficult to understand why he did not mention that in his initial recollections and, in turn, why PR1 made no mention of it in the Letter of Complaint either. And with that being the case, in the absence of persuasive evidence to suggest otherwise, I find that it is unlikely that the Supplier led him to believe that membership offered him the prospect of a financial gain (i.e., a profit), given his evolving version of events.

But even if I am wrong to conclude that, on this occasion, membership was unlikely to have been sold in that way, given what I have already said about Mr C's recollections of the sales process at the Time of Sale, I am not currently persuaded that would make a difference to the outcome in this complaint anyway.

Was the credit relationship between the Lender and Mr C 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 C and the Lender that was unfair to him and warranted relief as a result, whether the Supplier's breach of Regulation 14(3) which, having taken place during its antecedent negotiations with Mr C, 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 him to enter into the Purchase Agreement and the Credit Agreement is an important consideration.

But as I've already said, there was no suggestion in Mr C's initial recollections of the sales process at the Time of Sale that the Supplier led him to believe that the Signature Collection membership was an investment from which he would make a financial gain, nor was there any indication that he was induced into the purchase on that basis. In fact, the evidence available from the Supplier suggests that Mr C liked the product for holidays and therefore wanted to purchase an additional Signature Collection week (as he did here) for the further holidays that would provide. For example, the Supplier has provided a copy of the call notes from the 'welcome call' made to Mr C following the purchase and he said in that conversation he'd bought a Signature Collection week the previous year (2015) and now wanted a second week to go with it. And, that he had had a presentation the previous day and had thought about it overnight and came back the next day saying he would like the additional week after seeing the new unit.

I note that the PR 2 has questioned why Mr C would have been willing to purchase the product while reducing his existing points from 4,540 to 1,420 unless he'd purchased it as an investment. But, the PR 2 has misunderstood what happened in that regard at the Time of Sale – Mr C did not trade in all his existing membership(s) and associated points towards this purchase, and he did not lose points in the way they've suggested. As I've outlined above, Mr C had made previous purchases of fractional membership. He'd previously purchased another type of fractional membership (the 'Fractional Club') and had a total of 3,400 points as a result of those purchases. In 2015, he purchased his first week of Signature Collection membership which gave him another 1,420 points. At the Time of Sale in question here, he traded in 1,700 of his Fractional Club points towards the purchase in dispute here. He kept his remaining Fractional Club points and his other points from his first Signature Collection purchase. He then acquired another 1,420 Signature Collection points as a separate purchase in addition to his other memberships held. So, rather than this suggesting this purchase was bought as an investment as the PR 2 suggests, I think this fits with the rest of the evidence available which in my view, shows Mr C purchased an additional Signature Collection week simply to have an additional week of luxury holidays.

On balance, therefore, even if the Supplier had marketed or sold the Signature Collection membership as an investment in breach of Regulation 14(3) of the Timeshare Regulations, I am not persuaded that Mr C's decision to purchase Signature Collection 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 he would have pressed ahead with his 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 C 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

Mr C says the Supplier failed to ensure compliance and due diligence and failed in their duty of care to him. And, that the Supplier failed to provide sufficient information to allow him to make an informed decision.

But neither he nor the PR expanded on this point with any further detail such as what information he was given at the Time of Sale, or what information he feels he should have been given that he wasn't. It also hasn't been explained how exactly he feels this caused an unfairness in the credit relationship between him and the Lender.

I can see that Mr C has said his annual management charges have substantially increased, suggesting he feels he wasn't given sufficient information about this at the Time of Sale.

But, in any event, it seems likely to me that Mr C was told by the Supplier at the Time of Sale that the annual maintenance fees, for example, were payable each year and that they may increase. For example, Mr C's signed Information Statement provided at the Time of sale explained that owners will be required to contribute to the charges for management, repair and maintenance of the property by means of an annual management charge, payable whether weeks are used or not. And, that the charges will be budgeted annually and will be subject to increase or decrease as determined by the costs of managing the project and are payable in advance each year.

So, while it's possible the Supplier didn't give Mr C sufficient information, in good time, on certain elements of his membership, in order to satisfy its regulatory responsibilities at the Time of Sale, I haven't currently seen enough to persuade me that this, alone, rendered Mr C's credit relationship with the Lender unfair to him.

Moreover, as I haven't seen anything else to suggest that there are any other reasons why the credit relationship between the Lender and Mr C was unfair to him because of an information failing by the Supplier, I'm not persuaded it was.

Section 140A: Conclusion

In conclusion, therefore, given all of the facts and circumstances of this complaint, I don't think the credit relationship between the Lender and Mr C was unfair to him for the purposes of Section 140A. And taking everything into account, I think it's fair and reasonable to reject this aspect of the complaint on that basis."

So, overall, given the facts and circumstances of this complaint, I did not think that the Lender acted unfairly or unreasonably when it dealt with Mr C's Section 75 claims, and I was not persuaded that the Lender was party to a credit relationship with him under the Credit Agreement that was unfair to him for the purposes of Section 140A of the CCA. And having taken everything into account, I could see no other reason why it would be fair or reasonable to direct the Lender to compensate him.

The Lender responded to my provisional decision and confirmed they had nothing further to add. Neither Mr C nor the PR responded, nor did they provide any further evidence or arguments they wished to be considered.

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.

As neither party has provided any new evidence or arguments, I don't believe there is any reason for me to reach a different conclusion from that which I reached in my provisional decision (outlined above). I do wish to stress that I have considered all the evidence and arguments afresh before reaching that conclusion.

My final decision

For these reasons, I do not uphold Mr C's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 30 December 2024.

Fiona Mallinson
Ombudsman