DRN-5260262

The complaint

Mr and Mrs I'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 claims under Section 75 of the CCA.

What happened

Mr and Mrs I purchased membership of a timeshare (the 'Fractional Membership') from a timeshare provider (the 'Supplier') on 27 January 2015 (the 'Time of Sale'). They entered into an agreement with the Supplier to buy membership at a cost of €16,539 (the 'Purchase Agreement').

Fractional Membership was asset backed – which meant it gave Mr and Mrs I 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 I paid for their Fractional Membership by taking finance of £13,000 from the Lender in both of their names (the 'Credit Agreement').

Mr and Mrs I wrote to the Lender directly themselves in early 2019 (the 'Letter of Complaint'). This letter was not dated but the Lender has confirmed they received this on 11 February 2019. Mr and Mrs I explained they wanted to complain and said in summary:

- There were high pressure sales techniques used, including being persuaded to buy and pay on the day.
- They were promised low-cost maintenance fees, but instead the maintenance fees were constantly rising.
- After proceeding with the purchase they were never offered the high-quality customer service they were promised.
- Every time they wanted to go on holiday, they either had to make additional payments, or there was no availability when they wanted to take their holidays.
- They asked the Supplier to rent out their week but they didn't do this.
- They feel they were mis-sold as nothing turned out to be as described at the initial meeting.
- They've found that the same holidays, in the same resorts, can be booked cheaper through a travel agent or via the internet. This denies them the exclusivity of the resorts to members, as they were promised.
- Every time they did manage to get holidays, they would be harassed by the representatives to spend more money and this made them feel uncomfortable.

The Lender dealt with Mr and Mrs I's concerns as a complaint and issued its final response letter on 3 April 2019, rejecting it on every ground.

Mr and Mrs I 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.

Mr and Mrs I disagreed with the Investigator's assessment and asked for an Ombudsman's decision – which is why it was passed to me. At this stage, Mr and Mrs I appointed a professional representative (the 'PR') who added the following new points to the complaint:

- They were advised at this presentation that they would be able to rent out the weeks not used for holiday themselves, also that they would be able to sell the fractional membership at a profit – effectively they were told 'it pays for itself'.
- They were not given any time to consider their options.
- Although they did have a 14 day cooling off period, they were still on holiday so found it hard to do any due diligence.
- They did not discover the misrepresentations until a later date when they realised they can't rent or re-sell the membership.

I considered the matter and issued a provisional decision dated 30 December 2024. In that decision I said:

"***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.

When bringing their complaint, Mr and Mrs I didn't set out what regulatory or legal basis they felt the Lender needed to do something to put right what they said went wrong – I make no criticism of them in not doing so as I wouldn't expect them to necessarily know these things. Our Investigator considered the complaint and thought parts of it amounted to complaints that could be considered under the Consumer Credit Act 1974 (the 'CCA') and, having considered everything, I agree. So, I've reflected that in my approach to this complaint.

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 and Sections 140A-140C).*
- *The law on misrepresentation.*
- *The Timeshare Regulations.*
- *The Unfair Terms in Consumer Contracts Regulations 1999 (the 'UTCCR').*
- *The CPUT 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').

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 I could make against the Supplier.

Certain conditions must be met if the protection afforded to consumers is engaged, including, for instance, the cash price of the purchase and the nature of the arrangements between the parties involved in the transaction. The Lender does not dispute that the relevant conditions are met in this complaint. And as I'm satisfied that Section 75 applies, if I find that the Supplier is liable for having misrepresented something to Mr and Mrs I at the Time of Sale, the Lender is also liable.

This part of the complaint was made for several reasons that I set out at the start of this decision. They include being promised 'low-cost' maintenance fees which in fact kept rising, being promised high quality customer service which was not received, being told they would be able to rent out their week, but this didn't happen and being promised 'exclusivity' of the resorts.

I recognise that Mr and Mrs I have concerns about the way in which their Fractional Membership was sold, but they have not persuaded me that there was an actionable misrepresentation by the Supplier at the Time of Sale for the reasons they allege. And I say that because beyond the bare allegations, no evidence has been provided to support them such as what exactly they were told at the Time of Sale, by whom and in what context.

And further, the Supplier has explained that in relation to the maintenance fees, these have only increased by €10 (presumably per year) since the Time of Sale and no other charges have been payable beyond the maintenance fees.

In relation to renting out their week, the Supplier has confirmed that this is possible but this was only requested by Mr and Mrs I once after they'd used their rights to holiday in 2016, 2017 and 2018. The Supplier told them in June 2018 when they enquired about this that they would let them know if anyone wanted to rent their particular week, but then Mr and Mrs I explained they wanted to use their week in 2019, so the rental never went ahead for that reason. The Supplier has also said they don't offer a re-sale programme so this also seems an inherently unlikely statement to have been made at the Time of Sale.

What's more, as there's nothing else on file that persuades me there were any false statements of existing fact made to Mr and Mrs I by the Supplier at the Time of Sale, I do not think there was an actionable misrepresentation by the Supplier for the reasons they allege.

For these reasons, therefore, I do not think the Lender is liable to pay Mr and Mrs I any compensation for the alleged misrepresentations of 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 claim in question.

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 I 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.

Mr and Mrs I say that they could not holiday where and when they wanted to – which, on my reading of the complaint, suggests that they consider 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. It also looks like Mr and Mrs I made use of their fractional rights to holiday on four occasions between 2016 and 2019. I accept that they 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.

Overall, therefore, from the evidence I have seen to date, I do not think the Lender is liable to pay Mr and Mrs I 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 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 the contract entered into by Mr and Mrs I was misrepresented (or breached) by the Supplier in a way that makes for a successful claim under Section 75 of the CCA and outcome in this complaint. But from what Mr and

Mrs I said in their Letter of Complaint, and following the further submission by the PR, although not expressed in these exact terms, it also seems that they suggest that the credit relationship between them 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 they have 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 and Mrs I 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 and Mrs I's Fractional 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 and Mrs I 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:

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

1. *The Supplier's sales and marketing practices at the Time of 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 its circumstances.*

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

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

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

Mr and Mrs I say that they were pressured by the Supplier into purchasing Fractional Membership at the Time of Sale. I acknowledge that they may have felt weary after a sales process that went on for a long time. But they say little about what was said and/or done by the Supplier during their sales presentation that made them feel as if they had no choice but to purchase Fractional Membership when they simply did not want to. As the PR has highlighted, they were also given a 14-day cooling off period and they have not provided a credible explanation for why they did not cancel their membership during that time. I acknowledge the PR has said they were still on holiday during the cooling off period, but I don't see why this meant they couldn't cancel the agreement if they had felt pressured to purchase it. I also note that the Supplier has provided a copy of a letter sent to Mr and Mrs I's home address confirming the cooling off period had been extended to 20 February 2015, which appears to be after they would have returned home.

And with all of that being the case, I'm not currently persuaded that Mr and Mrs I made the decision to purchase Fractional Membership because their ability to exercise that choice was significantly impaired by pressure from the Supplier.

I don't think, therefore, that Mr and Mrs I's credit relationship with the Lender was rendered unfair to them under Section 140A for any of the reasons above. But there is another reason the PR has now suggested that the credit relationship was unfair and that is the suggestion that Fractional Membership was marketed and sold to them as an investment in breach of prohibition against selling timeshares in that way.

Was Fractional Membership marketed and sold at the Time of Sale as an investment in breach of regulation 14(3) of the Timeshare Regulations?

The Lender does not dispute, and I am satisfied, that Mr and Mrs I's Fractional 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 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 PR, in its subsequent submission to this Service, 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 and Mrs I'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 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 Membership. They just regulated how such products were marketed and sold.

To conclude, therefore, that Fractional Membership was marketed or sold to Mr and Mrs I 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 Membership offered them 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 Fractional Membership as an 'investment' or quantifying to prospective purchasers, such as Mr and Mrs I, 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 were, for instance, disclaimers in the contemporaneous paperwork that state that Fractional Membership was not sold to Mr and Mrs I as an investment opportunity.

The allegation here was not made by Mr and Mrs I when they first complained to the Lender about the sale of the Fractional Membership. But I acknowledge that the PR has now said Mr and Mrs I were told at the Time of Sale that they would be able to sell the Fractional Membership at a profit, and were effectively told it 'pays for itself'.

And I accept that it's possible that Fractional Membership was marketed and sold to them 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 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 and Mrs I's initial recollections of the sales process at the Time of Sale, that is not what appears to have happened. The suggestion that the Fractional Membership was sold and/or marketed as an investment doesn't form any part of their original Letter of Complaint, and at no point did they say or suggest that the Supplier led them to believe that their Fractional Membership would lead to a financial gain (i.e., a profit).

So, while PR now suggests, and may continue to argue in response to this provisional decision, that the Supplier marketed and sold Fractional Membership to Mr and Mrs I as an investment, following the outcome of Shawbrook & BPF v FOS (which they've referred to in their comments following the Investigator's view on this case), I don't recognise that assertion in their initial recollections of the sale.

Indeed, Mr and Mrs I's initial recollections and the Letter of Complaint were put together much closer to the Time of Sale and are, in my view, better evidence of what they remember

of the sales process at that time and why they were unhappy with it than the very recent submissions from the PR. After all, if Fractional Membership had been marketed and sold as an investment by the Supplier at the Time of Sale, it is difficult to understand why they did not mention that in their original comments and Letter of Complaint. And with that being the case, in the absence of persuasive evidence to suggest otherwise, whilst it is possible that the Supplier led them to believe that membership offered them the prospect of a financial gain (i.e., a profit), given their evolving version of events, I don't think it is probable that the Supplier did so.

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 and Mrs I'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 and Mrs I 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 I 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 Mr and Mrs I, 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.

But as I've already said, there was no suggestion in Mr and Mrs I's initial recollections of the sales process at the Time of Sale that the Supplier led them to believe that the Fractional Membership was an investment from which they would make a financial gain nor was there any indication that they were induced into the purchase on that basis. Indeed, they mentioned the benefits of purchasing for them being "luxury accommodation, cheap holidays, low-cost maintenance fees, and exclusivity of their resort". I find it hard to understand why, if the prospect of a financial gain from their purchase of the Fractional Membership was a motivation for them, this has not been mentioned at all in their recollections of the Time of Sale.

On balance, therefore, even if the Supplier had marketed or sold the Fractional Membership as an investment in breach of Regulation 14(3) of the Timeshare Regulations, I am not persuaded that Mr and Mrs I's decision to purchase Fractional 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 their 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 I and the Lender was unfair to them even if the Supplier had breached Regulation 14(3).

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 and Mrs I was unfair to them 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."

Overall, in conclusion, given the facts and circumstances of this complaint, I did not think that the Lender acted unfairly or unreasonably when it dealt with Mr and Mrs I's Section 75 claims, and I was not persuaded that the Lender was party to a credit relationship with them under the Credit Agreement that was unfair to them 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 them.

The Lender responded to my provisional decision and confirmed they had nothing further to add. Neither Mr and Mrs I nor their PR responded to my provisional decision, or provided 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 and Mrs I's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs I and Mr I to

accept or reject my decision before 24 February 2025.

Fiona Mallinson
Ombudsman