

The complaint

Ms 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 claims under section 75 (or section 75A) of the CCA.

Background to the complaint

Ms M purchased membership of a timeshare (the 'Fractional Club') from a timeshare provider (the 'Supplier') – purchasing the following number of fractional points on the dates below:

- 4,900 fractional points on 22 October 2015 for £79,815 – but after trading in her existing timeshare, she ended up paying £21,302 ('Purchase Agreement 1');
- 2,950 fractional points on 12 July 2016 for £11,912 – having traded in her 4,900 original fractional points ('Purchase Agreement 2');¹

(which, when appropriate, I'll simply refer to as the 'Purchase Agreements').

As this complaint is only concerned with the purchases on the above dates, those are the 'Times of Sale' for the purposes of my decision.

Fractional Club membership was asset backed – which meant it gave Ms M more than just holiday rights. It also included a share in the net sale proceeds of a property named on the relevant purchase agreement (which I'll refer to as the 'Allocated Properties') after their membership term ends.

Ms M paid for her fractional points by taking the following amounts of finance from the Lender:

- £21,302 on 22 October 2015 ('Credit Agreement 1');
- £11,912 on 12 July 2016 ('Credit Agreement 2');

(which, when appropriate, I'll simply refer to as the 'Credit Agreements'). Both loans were settled in 2020.

Ms M – using a professional representative (the 'PR') – wrote to the Lender on 10 August 2023 (the 'Letter of Complaint') to raise a number of different concerns. As those concerns haven't changed since they were first raised, and as both sides are familiar with them, it isn't necessary to repeat them in detail here beyond the summary above.

The Lender dealt with Ms M's concerns as a complaint and issued its final response letter on

¹ I asked about this purchase, and the Supplier told me that notwithstanding the reduction in the number of points, Ms M had obtained more conveniently located apartments and cheaper annual maintenance fees. As no complaint has been made about this aspect of the purchase, I have not investigated this further.

23 January 2024, rejecting it on every ground.

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

Ms M disagreed with the investigator's assessment and asked for an ombudsman's decision.

I issued my provisional findings to the parties on 25 February 2026. In my provisional decision, I said the following:

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.

However, 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.

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.

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

It was said in the Letter of Complaint that Fractional Club membership had been misrepresented by the Supplier at the Times of Sale because Ms M was told by the Supplier:

- (1) that Fractional Club membership had a guaranteed end date when that was not true;
- (2) that she was buying an interest in a specific piece of "real property" when that was not true;
- (3) that Fractional Club membership was an "investment" when that was not true.

The words and/or phrases allegedly used by the Supplier to misrepresent the Fractional Club for the reason given in point 1 were set out by the PR in the Letter of Complaint, and they were limited to: *"the Fractional Property Ownership Scheme had a guaranteed end date, specifically after 19 years, after which the clients would have no further legal liability to [the Supplier] under or in respect of the Scheme."*

The PR says that such a representation was untrue because the Sales Process begins on the Sale Date as defined in the Fractional Club Rules, and under Rule 9, particularly Rules 9.2.9 and 9.2.12, there is no guarantee that any sale will result at all, leaving prospective members to pay their annual management charge for an indefinite and unspecified period.

However, I cannot see why the phrase above would have been untrue at the Times of Sale even if it was said. It seems to me to reflect the main thrust of the contracts Ms M entered into. And while, under Rules 9.1 and 9.2.9 of the relevant Fractional Club Rules, the sale of the Allocated Properties could be postponed for up to two years by the 'Vendor',² longer than that if there were problems selling and the 'Owners'³ agreed, or for an otherwise specified period provided there was unanimous agreement in writing from the Owners, that does not render the representation above untrue. So, I am not persuaded that the representation above constituted a false statement of fact even if it was made.

As for points 2 and 3, neither of them strike me as misrepresentations even if such representations had been made by the Supplier (which I make no formal finding on). Telling prospective members that they were investing their money because they were buying a fraction or share of one of the Supplier's properties was not untrue – nor was it untrue to tell prospective members that they would receive some money when the allocated property is sold. After all, a share in an allocated property was clearly the purchase of a share of the net sale proceeds of a specific property in a specific resort. And while the PR might question the exact legal mechanism used to give prospective members that interest, it did not change the fact that they acquired such an interest.

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

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

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

Ms M says that she could not holiday where and when she wanted to. That was framed, in the Letter of Complaint, as part of her complaint about the fairness or otherwise of her credit relationships with the Lender under section 140A of the CCA. However, on my reading of the complaint, this suggests that the Supplier was not living up to its end of the bargain, potentially breaching the Purchase Agreements.

Yet, like any holiday accommodation, availability was not unlimited – given the higher demand at peak times, like school holidays, for instance. Some of the sales paperwork likely to have been signed by Ms M states that the availability of holidays

² Defined in the FPOC Rules as "CLC Resort Developments Limited".

³ Defined in the FPOC Rules as "a purchaser who has entered into a Purchase Agreement and has been issued with a Fractional Rights Certificate (which shall include the Vendor for such period of time until the maximum number of Fractional Rights have been acquired)."

was/is subject to demand. It also looks like she made use of her fractional points to holiday on a number of occasions. I accept that she 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 Agreements.

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

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

Having considered the entirety of the credit relationships between Ms M and the Lender along with all of the circumstances of the complaint, I don't think the credit relationships between them were likely to have been rendered unfair for the purposes of section 140A. When coming to that conclusion, and in carrying out my analysis, I have looked at:

1. The standard of the Supplier's commercial conduct – which includes its sales and marketing practices at the Times of Sale along with any relevant training material;
2. The provision of information by the Supplier at the Times 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 Times of Sale; and
4. The inherent probabilities of the sales given their circumstances.

I have then considered the impact of these on the fairness of the credit relationships between Ms M and the Lender.

The Supplier's sales and marketing practices at the Times of Sale

Ms M's complaint about the Lender being party to unfair credit relationships was and is made for several reasons.

They include, for various reasons, the allegation that the Supplier misled Ms M and carried on unfair commercial practices under regulations 5 and 6 of the CPUT Regulations.⁴ However, as regulations 5 and 6 state, commercial practices only amount to misleading actions or omissions if, in addition to satisfying one or more of the specific matters set out in those provisions, they cause or are likely to cause the average consumer to take a transactional decision they would not have taken otherwise. And as I haven't seen enough evidence to persuade me that, if there were any such actions or omissions at the Times of Sale (which I make no formal finding on), they led Ms M to make the purchasing decisions she did, I'm not persuaded that anything done or not done by the Supplier amounted to an unfair commercial practice for the purposes of those provisions.

The PR also alleges that the Supplier acted unfairly under regulation 7 Schedule 1 of the CPUT Regulations. But given the limited evidence in this complaint, I am not persuaded that the Supplier did.

In addition, the PR also says that:

⁴ The Consumer Protection from Unfair Trading Regulations 2008.

1. the right checks weren't carried out before the Lender lent to Ms M;
2. Ms M was pressured by the Supplier into purchasing Fractional Club membership at the Times of Sale;
3. there was one, or more, unfair contract terms in the Purchase Agreements.

However, as things currently stand, none of these strike me as reasons why this complaint should succeed.

I haven't seen anything to persuade me that the right checks weren't carried out by the Lender given this complaint's 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 Ms M was actually unaffordable before also concluding that she lost out as a result and then consider whether the credit relationship with the Lender was unfair to her for this reason. But from the information provided, I am not satisfied that the lending was unaffordable for Ms M.

I acknowledge that Ms M may have felt weary after sales processes that went on for a long time. But she says little about what was said and/or done by the Supplier during their sales presentations that made her feel as if she had no choice but to purchase Fractional Club membership when she simply did not want to. She was also given a 14-day cooling off period and she has not provided a credible explanation for why she did not cancel her membership during that time. Moreover, she did go on to upgrade her first purchase – which I find difficult to understand if the reason they went ahead with the purchase in question was because they were pressured into it. And with all of that being the case, there is insufficient evidence to demonstrate that Ms M made the decision to purchase Fractional Club membership because their ability to exercise that choice was significantly impaired by pressure from the Supplier.

As for the PR's argument that there were one or more unfair contract terms in the Purchase Agreements, I can't see that any such terms were operated unfairly against Ms M in practice, nor that any such terms led her to behave in a certain way to her detriment. And with that being the case, I'm not persuaded that any of the terms governing Fractional Club membership are likely to have led to an unfairness that warrants a remedy.

Overall, therefore, I don't think that Ms M's credit relationships with the Lender were rendered unfair to her under section 140A for any of the reasons above. But there is another reason why the PR now says the credit relationships with the Lender were unfair to her. And that's the suggestion that Fractional Club membership was marketed and sold to her as an investment in breach of a prohibition against selling timeshares in that way.

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

The Lender does not dispute, and I am satisfied, that Ms M's Fractional Club memberships 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 Times of Sale:

“A trader must not market or sell a proposed timeshare contract or long-term holiday product contract as an investment if the proposed contract would be a regulated contract.”

But the PR and Ms M say that the Supplier did exactly that at the Times of Sale – saying, in summary, that she was told by the Supplier that Fractional Club membership was the type of investment that would only increase in value.

The term “investment” is not defined in the Timeshare Regulations. But for the purposes of this provisional decision, and by reference to the decided authorities, an investment is a transaction in which money or other property is laid out in the expectation or hope of financial gain or profit.

A share in the Allocated Properties clearly constituted an investment as it offered Ms M the prospect of a financial return – whether or not, like all investments, that was more than what she first put into it. But it is important to note at this stage that the fact that Fractional Club membership included an investment element did not, itself, transgress the prohibition in regulation 14(3). That provision prohibits the *marketing and selling* of a timeshare contract as an investment. It doesn’t prohibit the mere existence of an investment element in a timeshare contract or prohibit the marketing and selling of such a timeshare contract *per se*.

In other words, the Timeshare Regulations did not ban products such as the Fractional Club. They just regulated how such products were marketed and sold.

To conclude, therefore, that Fractional Club membership was marketed or sold to Ms 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 her as an investment, i.e. told them or led her to believe that Fractional Club membership offered them the prospect of a financial gain (i.e., a profit) given the facts and circumstances of *this* complaint.

There is competing evidence in this complaint as to whether Fractional Club membership was marketed and/or sold by the Supplier at the Times of Sale as an investment in breach of regulation 14(3) of the Timeshare Regulations.

On the one hand, it is clear that the Supplier made efforts to avoid specifically describing membership of the Fractional Club as an ‘investment’ or quantifying to prospective purchasers, such as Ms M, the financial value of their share in the net sales proceeds of the Allocated Properties along with the investment considerations, risks and rewards attached to them. For example, the Member’s Declaration, which Mr and Mrs M both signed, says in paragraph 8:

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

On the other hand, I acknowledge that the Supplier’s sales process left open the possibility that the sales representative may have positioned Fractional Club membership as an investment. So, I accept that it’s equally possible that Fractional Club membership was marketed and sold to Ms M as an investment in breach of regulation 14(3).

However, whether or not there was a breach of the relevant prohibition by the Supplier is not ultimately determinative of the outcome in this complaint for reasons I

will come on to shortly. And with that being the case, it's not necessary to make a formal finding on that particular issue for the purposes of this decision.

Was the credit relationship between the Lender and Ms M rendered unfair?

Having found that it was possible that the Supplier breached regulation 14(3) of the Timeshare Regulations at the Times of Sale, I now need to consider what impact that breach had on the fairness of the credit relationships between Ms M and the Lender under the Credit Agreements and related Purchase Agreements, as the case law on section 140A makes it clear that regulatory breaches do not automatically create unfairness for the purposes of that provision. Such breaches and their consequences (if there are any) must be considered in the round, rather than in a narrow or technical way.

Indeed, it seems to me that, if I am to conclude that a breach of regulation 14(3) led to a credit relationship between Ms M and the Lender that was unfair to her and warranted relief as a result, then an important consideration is whether the Supplier's breach of regulation 14(3) led her to enter into the Purchase Agreements and the Credit Agreements.

But on my reading of the evidence before me, the prospect of a financial gain from Fractional Club membership was not an important and motivating factor when Ms M decided to go ahead with her purchases. In Ms M's witness statement (dated 5 November 2023), she describes how the timeshare was explained to her by the salesman in 2015, and it is a description of a profitable investment. But when she describes her actual motivation for buying it she focuses on the high pressure sales tactics and on her fear of missing out if someone else took her place. And in connection with the 2016 sale, she said this:

"The last purchase in 2016 was not as result of a presentation, it was because of the unsuitability of the apartments."

(That is in reference to her and her daughters' apartments originally having been in separate blocks.)

That doesn't mean Ms M wasn't interested in a share in the Allocated Properties. After all, that wouldn't be surprising given the nature of the product at the centre of this complaint. But as she doesn't persuade me that her purchases were motivated by her shares in the Allocated Properties and the possibility of a profit, I don't think a breach of regulation 14(3) by the Supplier was likely to have been material to the decisions she ultimately made.

On balance, therefore, even if the Supplier had marketed or sold the Fractional Club membership as an investment in breach of regulation 14(3) of the Timeshare Regulations, I am not persuaded that Ms M's decisions to purchase Fractional Club membership at the Times of Sale were motivated by the prospect of a financial gain (i.e., a profit). On the contrary, I think the evidence suggests she would have pressed ahead with her purchases whether or not there had been a breach of regulation 14(3). And for that reason, I do not think the credit relationships between Ms M and the Lender were unfair to her even if the Supplier had breached regulation 14(3).

The provision of information by the Supplier at the Times of Sale

The PR says that Ms M was not given sufficient information at the Times of Sale by the Supplier about the ongoing costs of Fractional Club membership. The PR also

says that the contractual terms governing the ongoing costs of membership and the consequences of not meeting those costs were unfair contract terms.

As I've already indicated, the case law on section 140A makes it clear that it does not automatically follow that regulatory breaches create unfairness for the purposes of the unfair relationship provisions. The extent to which such mistakes render a credit relationship unfair must also be determined according to their impact on the complainant.

I acknowledge that it is also possible that the Supplier did not give Ms M sufficient information, in good time, on the various charges they could have been subject to as Fractional Club members in order to satisfy the requirements of regulation 12 of the Timeshare Regulations (which was concerned with the provision of 'key information'). But even if that was the case, I cannot see that the ongoing costs of membership were applied unfairly in practice. And as neither Ms M nor the PR have persuaded me that she would not have pressed ahead with her purchases had the finer details of the Fractional Club's ongoing costs been disclosed by the Supplier in compliance with regulation 12, I cannot see why any failings in that regard are likely to be material to the outcome of this complaint given its facts and circumstances.

As for the PR's argument that there were one or more unfair contract terms in the Purchase Agreements, I can't see that any such terms were operated unfairly against Ms M in practice, nor that any such terms led her to behave in a certain way to her detriment. And with that being the case, I'm not persuaded that any of the terms governing Fractional Club membership are likely to have led to an unfairness that warrants a remedy.

Commission

In November 2024 Ms M's personal representative ("the PR") asserted on behalf of Ms M that the payment of commission made the financial arrangement unfair. The PR didn't give a level of commission at which it considered unfairness arose, but its arguments included the following:

- Despite requests, there had been no disclosure of the actual amount of commission paid by the Lender to the Supplier;
- per the Court of Appeal's judgment in *Johnson*⁵, the percentage of commission should be based upon "*the sum borrowed*";
- the amount of the annual percentage rate of interest ("APR") is key and was unusually high, substantially increasing the total charge for credit;
- commission paid by the Supplier to its self-employed sales representatives should also be disclosed and taken into account in the calculation used to determine unfairness.

Did the commission arrangements render the credit relationship unfair?

My reading of the Supreme Court's judgment in *Hopcraft, Johnson and Wrench* is that it sets out principles which can apply to credit brokers other than car dealer–

⁵ The PR's submission references the Court of Appeal judgment (*Johnson v FirstRand Bank Limited, Wrench v FirstRand Bank Limited and Hopcraft v Close Brothers* [2024] EWCA Civ 1106 ("*Johnson*"). The Supreme Court has since handed down its judgment clarifying the position in law.

credit brokers. So I've taken into account those principles when considering the allegations of undisclosed payments of commission in this complaint.

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

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

- The size of the commission (as a percentage of the total charge for credit). In Mr Johnson's case it was 55%. This was “*so high*” and “*a powerful indication that the relationship...was unfair*”;⁶
- The failure to disclose the commission; and
- The concealment of the commercial tie between the car dealer and the lender.

The Supreme Court also confirmed that the following factors, in what was a non-exhaustive list, will normally be relevant when assessing whether a credit relationship was/is unfair under section 140A of the CCA:

- The size of the commission as a proportion of the charge for credit;
- The way in which commission is calculated (a discretionary commission arrangement, for example, may lead to higher interest rates);
- The characteristics of the consumer;
- The extent of any disclosure and the manner of that disclosure (which, insofar as section 56 of the CCA is engaged, includes any disclosure by a supplier when acting as a broker); and
- Compliance with the regulatory rules.

After careful consideration, I don't think *Hopcraft, Johnson and Wrench* assists Ms M in arguing that her credit relationship with the Lender was unfair to her for reasons relating to commission, given the facts and circumstances of this complaint.

I haven't seen anything to suggest the Lender and Supplier were tied to one another contractually or commercially in a way that wasn't properly disclosed to Ms M. Nor have I seen anything that persuades me that the commission arrangements between her gave the Supplier a choice over the interest rate that led Ms M into a credit agreement that cost disproportionately more than it otherwise could have.

I recognise that it's possible that the Lender and the Supplier failed to follow the regulatory guidance in place at the Time of Sale insofar as it was relevant to disclosing the commission arrangements between her. But as I noted in my provisional decision, case law on section 140A makes clear that regulatory breaches

⁶ *Hopcraft, Johnson and Wrench* (para 327).

do not automatically lead to an unfair credit relationship, and that such breaches and any consequences must be considered in the round rather than in a narrow or technical way.

With that being the case, even if the Lender and the Supplier failed to follow the relevant regulatory guidance at the Time of Sale, I'm not minded to think any such failure is itself a reason to find the credit relationship in question unfair to Ms M. I say this for the following reasons.

In stark contrast to the facts in Mr Johnson's case, the Lender has provided evidence that there was no payment of commission to the Supplier for arranging Ms M's Credit Agreement. I can't see, therefore, that any of the arguments made around a failure to disclose that fact could possibly succeed, particularly as it can't be shown that Ms M would have made a different decision about whether to take out the loan had she known there was no commission.

What's more, based on what I've seen so far, the Supplier's role as a credit broker wasn't a separate service and distinct from its role as the seller of timeshares. It was simply a means to an end in the Supplier's overall pursuit of a successful timeshare sale. I can't see that the Supplier gave an undertaking – either expressly or impliedly – to put to one side its commercial interests in pursuit of that goal when arranging the Credit Agreement. As it wasn't acting as an agent of Ms M but as the supplier of contractual rights she obtained under the Purchase Agreement, the transaction doesn't strike me as one with features that suggest the Supplier had an obligation of 'loyalty' to her when arranging the Credit Agreement and thus a fiduciary duty.

I don't consider it necessary for me to take into account any commission the Supplier might have paid to its sales representatives, or that this should be disclosed or factored into any calculation used to determine unfairness. Even if any such arrangement was in place (and I make no finding in this respect), its disclosure and/or payment would be further removed from any obligations the Supplier might have held, and even less likely to have an impact on Ms M's decision to enter into the Credit Agreement.

Overall, I'm don't intend to conclude that the commission arrangements between the Supplier and the Lender were likely to have led to a sufficiently extreme inequality of knowledge that rendered the credit relationship unfair to Ms M.

So, given all of the factors I've looked at both here and in my provisional decision, and having taken all of her into account, I'm still not persuaded that the credit relationship between Ms M and the Lender under the Credit Agreement and related Purchase Agreement was unfair to her. And as things currently stand, I don't think it would be fair or reasonable that I uphold this complaint on that basis.

Conclusion: alternative grounds of complaint

Although the PR's submissions expressed the view that payment of commission made the financial arrangements unfair, I'm conscious that there might be some alternative grounds that could constitute separate and freestanding complaints to Ms M's allegation of an unfair credit relationship.

The first ground relates to whether the Lender is liable for the dishonest assistance of a breach of fiduciary duty by the Supplier because the Supplier took a payment of commission from the Lender without telling Ms M (that is, secretly). But given I'm not

persuaded the Supplier – when acting as credit broker – owed Ms M a fiduciary duty, I can't see how I could properly uphold on this ground.

The second relates to the Lender's compliance with the regulatory guidance in place at the Time of Sale insofar as it was relevant to disclosing the commission arrangements between it and the Supplier. As I've said, it's possible that the Lender failed to follow the relevant regulatory guidance. But I don't think any such failure on the Lender's part leads to my awarding compensation to Ms M because, for the reasons I also set out above, I think Ms M would still have taken out the loan to fund her purchase at the Time of Sale had the commission arrangements been adequately disclosed at that time.

Conclusion

In conclusion, as things currently stand, I do not think that the Lender acted unfairly or unreasonably when it dealt with the relevant section 75 claims, and I am not persuaded that the Lender was party to credit relationships with Ms M under the Credit Agreements that were unfair to her for the purposes of section 140A of the CCA – nor do I see any other reason why it would be fair or reasonable to direct the Lender to compensate her.

Responses to my provisional findings

The Lender accepted my provisional decision. The PR didn't accept the proposed outcome. It made further submissions in support of Ms M's position. Having received and reviewed these, I'm now proceeding with my final decision.

The legal and regulatory context

The legal and regulatory context that I think is relevant to this complaint has been shared in several hundred published decisions on very similar complaints, as well as in previous correspondence with the parties. So there's no need for me to set this out again in detail here. I simply remind the parties that our rules⁷ say that in considering what is fair and reasonable in all the circumstances of the complaint, I will 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.

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.

After considering the case afresh and having regard for what's been said in response to my provisional decision, I find it offers no persuasive reason to depart from the conclusions I've previously set out. I'll explain why.

The PR originally raised various points of complaint, such as those giving rise to Ms M's section 75 claim, which I addressed in my provisional decision. In its response, it hasn't made any further comments in relation to most of its original points, or said anything that leads me to think it disagrees with my provisional conclusions in relation to those points. So I'll focus here on the points the PR *has* made in response.

⁷ Financial Conduct Authority ("FCA") Handbook – DISP 3.6.4R ("R" denotes a rule).

The PR's response to my provisional decision relates mainly to the issue of whether the credit relationship between Ms M and the Lender was unfair *per* section 140A of the CCA. In particular, the PR has provided more comment in relation to whether the membership was sold to Ms M as an investment at the Time of Sale. It has repeated and elaborated on the allegations about failing to carry out affordability checks, wrongly describing what was being sold as a share of real property when it was only a share of the proceeds of the sale, and high pressure sales tactics.

The PR has also made representations about the Lender's knowledge of the Supplier's sales model. But I don't think I need to say more about that, because section 56 of the CCA makes the Lender liable for the conduct of the Supplier at the Time of Sale as if it was the Supplier's agent, whatever it knew or didn't know.

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

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

In my provisional decision I accepted the possibility that Fractional Club membership was marketed and/or sold to Ms M as an investment, in breach of regulation 14(3). I went on to explain that relevant case law⁸ indicates that in considering the question of relief for any resultant unfairness in the credit relationship, I needed to take into account any material impact of such a breach on Ms M's decision whether to enter into the Purchase and Credit Agreements. And I set out in my provisional decision the reasons why I didn't find that evidence sufficiently persuasive that Ms M's purchase decision would have been any different, given the other motivational factors she had described. Having re-examined Ms M's statement that remains my view, for the reasons previously given.

The PR has argued that "*The relevant question is not whether the representation was the sole or dominant reason for entering the agreement, but whether it materially influenced the consumer's decision.*" But it seems to me that that is just another way of stating the same causative test, which is whether the representation resulted in unfairness depends on whether Ms N would still have made the same decision or not if the representation had not been made. If she would still have bought the fractional points, then it is difficult to see how the representation could have resulted in unfairness in the relationship between her and the Lender.

So as I said before, whether or not the Supplier marketed or sold Fractional Club membership as an investment in breach of regulation 14(3), I'm not persuaded Ms M's decision to make the purchase was materially impacted by the prospect of a financial gain. It follows that I find the credit relationship between Ms M and the Lender was not rendered unfair to her for this reason.

Affordability checks

I still haven't seen anything to persuade me that the right checks weren't carried out by the Lender, or that the loan was unaffordable. And I don't agree that any failure to carry out proper checks (if there was such a failure) automatically means that the resulting credit relationship was unfair even if the loan was in fact affordable.

The nature of Ms N's interest in the Allocated Property

I don't think that the distinction between owning a share of a freehold (or Spanish equivalent) of a property and being the beneficiary of a trust which holds and then sells the property for

⁸ *Carney and Kerrigan*.

the benefit of the beneficiaries is as significant as the PR suggests. It does not change the fact that Ms M owned a joint share in a specific Allocated Property which was identified on their Purchase Agreement, and that she would receive her share of the sale proceeds when it was sold. I don't think that's unfair.

High pressure sales tactics

Finally, I remain of the view that the 14-day cooling-off period cures any unfairness that might otherwise have resulted from any high pressure sales tactics. On that subject, the PR wrote: "*the provisional decision appears to assess pressure primarily by reference to explicit statements of coercion.*" But I don't recognise that in my provisional decision – indeed, I recognised the length of the sales presentation was a potential factor. While I accept that the existence of the cooling-off period doesn't mean that there weren't any high pressure sales tactics, the relevance of the cooling-off period is that it gave Ms N an opportunity to reconsider and cancel her purchase when she was no longer under pressure.

Section 140A: Conclusion

Given all of the factors I've looked at in this part of my decision, and having taken all of them into account, I remain unpersuaded that the credit relationship between Ms M and the Lender under the Credit Agreement and related Purchase Agreement was unfair to her such that it warrants the Lender offering any redress.

Conclusion

After careful reconsideration of the facts and circumstances of this complaint, I adopt my provisional conclusions as part of my final decision. For the reasons I've given above, I don't think the Lender acted unfairly or unreasonably when it dealt with Ms M's section 75 claims. And I'm not persuaded that the Lender was party to a credit relationship with Ms M that was unfair to her for the purposes of section 140A of the CCA. Having taken everything into account, I see no other reason why it would be fair or reasonable for me to direct the Lender to compensate Ms M.

My final decision

For the reasons set out above, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms M to accept or reject my decision before 10 April 2026. But this final decision brings our involvement in this matter to an end.

Richard Wood

Ombudsman