DRN-5583594

The complaint

Mrs K'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 her under Section 140A of the Consumer Credit Act 1974 (as amended) (the 'CCA') and (2) deciding against paying a claim under Section 75 of the CCA.

What happened

Mrs K and another party purchased membership of a timeshare (the 'Signature Collection') from a timeshare provider (the 'Supplier') on 15 September 2015 (the 'Time of Sale'). She entered into an agreement with the Supplier to buy 850 fractional points at a cost of £18,224 (the 'Purchase Agreement'). But after trading in her existing timeshare she ended up paying £10,424 for membership of the Signature Collection.

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

Mrs K paid for her Signature Collection membership by taking finance of £22,950 from the Lender in her name (the 'Credit Agreement'). I understand the additional funding was to repay an existing loan taken with another lender to finance the purchase of Mrs K's existing timeshare around a year earlier.

Mrs K – using a professional representative (the 'PR') – wrote to the Lender on 13 September 2019 (the 'Letter of Complaint') to complain about:

1. Misrepresentations by the Supplier at the Time of Sale giving her a claim against the Lender under Section 75 of the CCA, which the Lender failed to accept and pay.

2. 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.

3. The Credit Agreement being unenforceable because it was not arranged by a credit broker regulated by the Financial Conduct Authority (the 'FCA')] to carry out such an activity.

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

Mrs K says that the Supplier made a number of pre-contractual misrepresentations at the Time of Sale – namely that the Supplier told her that Signature Collection membership had a guaranteed end date when that was not true because the sale of the Allocated Property could be halted by any of the other Signature Collection members if they did not agree to the sale. She said the supplier itself purchased several weeks so it too could halt the sale despite all "independent" members agreeing to it.

Mrs K says that she has a claim against the Supplier in respect of the misrepresentation set out above, and therefore, under Section 75 of the CCA, she has a like claim against the

Lender, who, with the Supplier, is jointly and severally liable to Mrs K.

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

Mrs K says that the Supplier breached the Purchase Agreement because there is no guarantee that she will receive her share of the net sale proceeds of the Allocated Property. As a result of the above, Mrs K says that she has a breach of contract claim against the Supplier, and therefore, under Section 75 of the CCA, she has a like claim against the Lender, who, with the Supplier, is jointly and severally liable to Mrs K.

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

The Letter of Complaint said that the credit relationship between Mrs K and the Lender was unfair to her under Section 140A of the CCA and that "damages were sustained because of the Resort Owner's misrepresentations, negligence, failures and unfair initial contract negotiations and sales tactics". It said this included statements that Mrs K and her husband could "sell their timeshare week after nineteen years in order to yield a profit".

The Lender dealt with Mrs K's concerns as a complaint and issued its final response letter +on 28 October 2019, rejecting it on every ground. Mrs K then referred the complaint to the Financial Ombudsman Service.

Sometime after this the PR ceased to act on behalf of Mrs K and she is now unrepresented. Mrs K wrote to The Lender in July 2022 expanding upon her complaint to include the following points.

- She was pressured into purchasing Signature Collection membership by the Supplier.
- She found it difficult to book the holidays she wanted, when she wanted.
- The decision to lend was irresponsible because the Lender didn't carry out the right creditworthiness assessment and the loan was unaffordable.

I issued a provisional decision in April 2025 explaining why I didn't plan to uphold Mrs K's complaint. I said:

> *"I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.*
>
> *And having done 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.*
>
> ***The legal and regulatory context***
>
> *In considering what is fair and reasonable in all the circumstances of the complaint, I am required under DISP 3.6.4R to take into account: relevant (i) law and regulations; (ii) regulators' rules, guidance and standards; and (iii) codes of practice; and (where*

appropriate), what I consider to have been good industry practice at the relevant time.

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

- *The CCA (including Section 75 and Sections 140A-140C).*
- *The law on misrepresentation.*
- *The Timeshare Regulations.*
- *Case law on Section 140A of the CCA – including, in particular:*
  - *The Supreme Court's judgment in Plevin v Paragon Personal Finance Ltd [2014] UKSC 61 ('Plevin') (which remains the leading case in this area).*
  - *Scotland v British Credit Trust [2014] EWCA Civ 790 ('Scotland and Reast')*
  - *Patel v Patel [2009] EWHC 3264 (QB) ('Patel').*
  - *The Supreme Court's judgment in Smith v Royal Bank of Scotland Plc [2023] UKSC 34 ('Smith').*
  - *Carney v NM Rothschild & Sons Ltd [2018] EWHC 958 ('Carney').*
  - *Kerrigan v Elevate Credit International Ltd [2020] EWHC 2169 (Comm) ('Kerrigan').*
  - *R (on the application of Shawbrook Bank Ltd) v Financial Ombudsman Service Ltd and R (on the application of Clydesdale Financial Services Ltd (t/a Barclays Partner Finance)) v Financial Ombudsman Service [2023] EWHC 1069 (Admin) ('Shawbrook & BPF v FOS').*

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 Mrs K 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 Mrs K at the Time of Sale, the Lender is also liable.

The PR said the Supplier told Mrs K that her membership had a guaranteed end date when that was not true. However, no further evidence has been provided beyond the bare allegation made here, such as what was said, by who and what in circumstances.

There's also nothing else on file that persuades there were any false statements of existing fact made to Mrs K by the Supplier at the Time of Sale, I do not think there was an actionable misrepresentation by the Supplier for the reasons she alleges.

For these reasons, therefore, I do not think the Lender is liable to pay Mrs K 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 Mrs K 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.

Mrs K says that she could not holiday when or where she wanted to – which, on my reading of the complaint, suggests that she considers 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. Some of the sales paperwork signed by Mrs K states that the availability of holidays was/is subject to demand. 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 Agreement.

Mrs K also says that the Supplier breached the Purchase Agreement because there is no guarantee that she will receive her share of the net sale proceeds of the Allocated Property. I understand that she is saying that she fears that, when the time comes for the Allocated Property to be sold, she will not receive their 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.

Overall, therefore, from the evidence I have seen to date, I do not think the Lender is liable to pay Mrs K 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 Mrs K 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 Mrs K also says that the credit relationship between her 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 she 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 Mrs K 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 Mrs K's membership of the Signature Collection 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 her 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."

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 Mrs K 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 Mrs K and the Lender.

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

The PR says that the right affordability checks weren't carried out before the Lender

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

Mrs K says that she was pressured by the Supplier into purchasing Signature Collection membership at the Time of Sale. I acknowledge that she may have felt weary after a sales process that went on for a long time. But she has said little about what was said and/or done by the Supplier during her sales presentation that made her feel as if she had no choice but to purchase Signature Collection 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. And with all of that being the case, there is insufficient evidence to demonstrate that Mrs K made the decision to purchase Signature Collection membership because her ability to exercise that choice was significantly impaired by pressure from the Supplier.

I'm not persuaded, therefore, that Mrs K's credit relationship with the Lender was rendered unfair to her under Section 140A for any of the reasons above. However, there is another reason, why the PR said Mrs K's credit relationship with the Lender was unfair to her which (although not precisely articulated as such) I've taken to mean that Signature Collection membership was marketed and sold to her as an investment in breach of regulation 14(3) of the Timeshare Regulations.

<u>Was 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>

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

Regulation 14(3) of the Timeshare Regulations prohibited the Supplier from marketing or selling 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 in some of Mrs K's comments she suggests that the Supplier did sell or market membership to them as an investment 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.

Mrs K's share in the Allocated Property clearly, in my view, constituted an investment

as it offered her the prospect of a financial return – whether or not, like all investments, that was more than what she 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 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 Signature Collection. They just regulated how such products were marketed and sold.

To conclude, therefore, that Signature Collection membership was marketed or sold to Mrs K 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 her or led her to believe that Signature Collection membership offered her 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 membership of the Signature Collection as an 'investment' or quantifying to prospective purchasers, such as Mrs K, the financial value of her 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 Mrs K 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. So, I accept that it's possible that Signature Collection membership was marketed and sold to Mrs K as an investment in breach of Regulation 14(3).

Nonetheless, it is not necessary to make a formal finding on that particular issue because, even if the Supplier did breach Regulation 14(3) at the Time of Sale, I am not persuaded that makes a difference to the outcome in this complaint anyway.

<u>Was the credit relationship between the Lender and Mrs K rendered unfair?</u>

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. […]"

I've thought carefully about everything Mrs K has told us. However, I'm not persuaded there is any indication that Mrs K was induced into the purchase on the basis that Signature Collection membership was an investment from which she would make a financial gain. I'll explain why.

I accept that upon making a complaint to the Lender in 2019 the PR did say that Mrs K was led to believe she could sell her timeshare after nineteen years in order to yield a profit and that she "relied on this information which aligned with her needs and interests". I understand however that the words used to express this in the letter of complaint on 13 September 2019 were the same as those frequently provided by the PR on behalf of several of its other customers in similar complaints. So, it seems they were not Mrs K's own words.

That is not to say that the statement made by the PR could not possibly have reflected what Mrs K experienced at the Time of Sale. However, in this particular case I think the evidence, including Mrs K's subsequent testimony in her own words, suggests that she did not place as much importance on receiving a profit from the investment that the PR suggested she did in the complaint letter.

When Mrs K contacted Shawbrook in July 2022 this was the first evidence of the complaint being put in her words. She made reference to several complaint points in this communication but none of them allude to her having purchased Signature Collection membership as an investment from which she would make a financial gain. If this was so important to Mrs K, I find it difficult to understand why no mention was made of it in this letter.*

And while she does allude to this in her second letter to Shawbrook in August 2023, from the content of that letter I think she does so after learning of the court's decision in Shawbrook & BPF v FOS. So, I think her most recent letter, complaint form and recollections were likely to have been coloured by the outcome of that case as there's little to nothing from earlier on in the complaint in Mrs K's own words to suggest the investment element was important to her.*

As I understand it the Signature Collection provided Mrs K with priority to reserve the Allocated Property for her allocated week, provided she booked more than three months before this. This does not appear to have been a feature of the existing timeshare she traded in which gave no such preference. I note also that, while Mrs K's existing timeshare included 1200 points that she could use towards booking other

accommodation with the Supplier, her rights to use those points were on a bi-annual basis. The Signature Collection on the other hand provided use of 850 points (should Mrs K have chosen not to make use of the Allocated Property for her allocated week) on an annual basis. From looking at the Supplier's training material it appears the Allocated Property was also marketed as being more luxurious than its offerings under Mrs K's existing timeshare.

All of this considered, it appears entirely feasible, and indeed most likely in my view given the emphasis Mrs K placed on the lack of availability of accommodation in her letter to Shawbrook in July 2022, that she chose to upgrade to the Signature Collection not because of the potential to make an investment return but for other reasons such as the potential for more choice and availability and the standard of accommodation on offer.*

It's possible that Mrs K was interested in both holidays and the investment element, which wouldn't be surprising given the nature of the product at the centre of this complaint, but from what I have seen and been told to date, I don't think the investment element of the membership was the reason for her purchase.

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 Mrs K'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 she would have pressed ahead with her 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 Mrs K and the Lender was unfair to her 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 Mrs K was unfair to her 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.

The complaint about the Credit Agreement being unenforceable because it was arranged by a credit broker that was not regulated by the FCA to carry out that activity

Mrs K says that the Credit Agreement was arranged by an unauthorised credit broker, the upshot of which is to suggest that the Lender wasn't permitted to enforce the Credit Agreement as a result.

However, having looked at the Financial Ombudsman Service's internal records and the FCA register, I can see that the business named on the Credit Agreement as the credit intermediary was authorised by the FCA. And in the absence of any evidence to suggest that it wasn't authorised to broker credit, I am not persuaded that the Credit Agreement was arranged by an unauthorised credit broker.

In conclusion, given the facts and circumstances of this complaint, I do not think that the Lender acted unfairly or unreasonably when it dealt with Mrs K's Section 75 claim, and I am not persuaded that the Lender was party to a credit relationship with her under the Credit Agreement that was unfair to her for the purposes of Section 140A of the CCA. And having taken everything into account, I see no other reason

why it would be fair or reasonable to direct the Lender to compensate her"

* Asterisked references to *"Shawbrook"* are references to the Lender.

The Lender agreed with my provisional decision and said it had nothing further to add.

Mrs K did not agree.

The complaint has therefore been passed back to me for a final decision.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I've also thought carefully about Mrs K's comments in response to my provisional decision. However, these comments have not persuaded me that the outcome I said I planned to reach, or the reasons for doing so, in my provisional decision were unfair or unreasonable.

Mrs K said my provisional decision failed to address the fact a representative of the Lender was not present at the Time of Sale. From what I have seen, there was no requirement for a representative of the Lender to have been present for the sale. Neither have I seen evidence that suggests the Supplier did not have the relevant authorisation from the FCA to arrange the Credit Agreement on the Lender's behalf. As I explained in my provisional decision also, where evidence is incomplete (such as there being no recording of the sales discussions for example) I've made findings on the balance of probabilities. So just because the Lender wasn't present for the sales discussions, this doesn't prevent me from making findings on what I think was most likely to have happened at the Time of Sale and I've taken Mrs K's testimony into account when deciding this along with the contemporaneous documentation.

Mrs K also said my provisional decision did not address the fact "*the membership was never used"*. But her reasons for this appear to be that she could not book holidays at the times she wanted them. I addressed this in my provisional decision when I said "*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 signed by Mrs K states that the availability of holidays was/is subject to demand. 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 Agreement".* Mrs K's comments do not persuade me any different and indeed reinforce what I think about her main reason for purchasing Signature Club membership being better availability of holidays rather than any investment element of it.

Lastly, Mrs K has said that I am "*going against the High Court Ruling"* which I assume to be the decision of the court in *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').* The findings made by the court were in respect of that particular case, in proceedings by the Lender against this service, not Mrs K's complaint. And while I have considered the findings of the court in that case when looking at Mrs K's complaint, the outcome of that case doesn't mean I shouldn't consider Mrs K's complaint on it own merits. The decision of the court was not that all timeshares sold by the Supplier were mis-sold or that all of the Lender's credit agreements with its customers were unfair on those customers as per S.140A.

Overall, for the same reasons I gave in my provisional decision, (as set out in the '*what*

happened' section of this decision) along with those I've explained above, I still don't find that the Lender acted unfairly or unreasonably when it dealt with Mrs K's Section 75 claim, and I am not persuaded that the Lender was party to a credit relationship with her under the Credit Agreement that was unfair to her for the purposes of Section 140A of the CCA. And having taken everything into account, I still see no other reason why it would be fair or reasonable to direct the Lender to compensate her.

My final decision

For the reasons I've explained above my final decision is that I do not uphold Mrs K's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs K to accept or reject my decision before 25 June 2025.

Michael Ball
Ombudsman