DRN-5637455

The complaint

Mr and Mrs F'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 F had a history of purchasing timeshares from a particular timeshare provider (the 'Supplier'), from 2011 until 2015. The present complaint concerns only their final purchase in 2015, but I've outlined their other purchases below for the purpose of putting things in context.

In February 2011 Mr and Mrs F purchased a trial membership from the Supplier which they cancelled, as was their right, within 14 days.

On 26 June 2012 Mr and Mrs F purchased membership of a timeshare (the 'Fractional Club') from the Supplier at a cost of £15,899. This purchase was financed by way of a loan with the Lender.

Fractional Club membership was asset backed – which meant it gave Mr and Mrs F 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 was due to end.

On 9 April 2013 Mr and Mrs F upgraded their Fractional Club membership. They entered into a new Purchase Agreement with the Supplier for 1,494 fractional points. It appears the previous membership was traded in (the value given isn't in evidence), leaving an amount to pay of £6,947. This purchase was financed by way of a loan with the Lender.

On 15 February 2015 (the 'Time of Sale') Mr and Mrs F upgraded their Fractional Club membership and it's this upgrade which is the subject of this complaint. They entered a new Purchase Agreement with the Supplier for 1,540 fractional points. It appears the previous membership was traded in (the value given is once again not in evidence), leaving an amount to pay of £7,214.

Mr and Mrs F paid for this Fractional Club membership by taking finance of £7,214 from the Lender in their joint names (the 'Credit Agreement'). Under the terms of the Credit Agreement they were expected to make 180 monthly payments fixed at £114.25 a month for the first 60 months. However, I understand they repaid the loan in full a few months after taking it out.

Mr and Mrs F – using a professional representative (the 'PR') – wrote to the Lender on 28 January 2021 (the 'Letter of Complaint') to complain about:

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

2. A breach of contract by the Supplier giving them a claim against the Lender under Section 75 of the CCA, which the Lender failed to accept and pay.
3. The Lender being party to an unfair credit relationship under the Credit Agreement and related Purchase Agreement for the purposes of Section 140A of the CCA.
4. The decision to lend being irresponsible because the Lender didn't carry out the right creditworthiness assessment.

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

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

1. Told them that Fractional Club membership had a guaranteed end date when that wasn't true.
2. Told them that they needed to buy the fractional timeshare in order to *"exit their membership".*

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

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

Mr and Mrs F says that the Supplier breached the Purchase Agreement because there is no guarantee that they will receive their share of the net sale proceeds of the Allocated Property.

Mr and Mrs F also say that they have no control over the fees charge by the Supplier.

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

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

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

1. The Supplier failed to ascertain if Mr and Mrs F could afford the loan and failed to review other financial products making the loan unfair.
2. The Supplier applied undue pressure on Mr and Mrs F to procure their agreement to the loan with the Lender.
3. The contractual terms allowed the Supplier to terminate the agreement if they failed to pay fees as concluded in the case of *Link Financial Ltd v Wilson* [2014] EWHC 252 *("Wilson")*.
4. The Supplier breached EU Law during the sale (although nothing further was specifically referred to).

The Lender dealt with Mr and Mrs F's concerns as a complaint and issued its final response letter on 10 May 2021, rejecting it on every ground.

Mr and Mrs F then referred the complaint to the Financial Ombudsman Service. It was assessed by an Investigator who, having considered the information on file, upheld the complaint on its merits.

The Investigator thought that the Supplier had marketed and sold Fractional Club membership as an investment to Mr and Mrs F at the Time of Sale in breach of Regulation 14(3) of the Timeshare Regulations. And given the impact of that breach on their purchasing decision, the Investigator concluded that the credit relationship between the Lender and Mr and Mrs F was rendered unfair to them for the purposes of section 140A of the CCA.

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

On 2 June 2025 I issued a provisional decision which read as follows.

The legal and regulatory context

In considering what's fair and reasonable in all the circumstances of the complaint, I'm 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'm satisfied that of particular relevance to this complaint is:

- The CCA (including Section 75 and Sections 140A-140C).
- The law on misrepresentation.
- The Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010 (the 'Timeshare Regulations').
- The Unfair Terms in Consumer Contract Regulations 1999 ('UTCCRs').
- The Consumer Protection from Unfair Trading Regulations 2008 (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'*).
    - *Link Financial v Wilson* [2014] EWHC 252 (*'Wilson'*)

Good industry practice – the RDO Code

The Timeshare Regulations provided a regulatory framework. But as the parties to this complaint already know, I'm 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').

What I've provisionally 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.

And having done that, I don't currently think this complaint should be upheld.

But before I explain why, I want to make it clear that my role as an Ombudsman isn't to address every single point that has been made to date. Instead, it's to decide what's fair and reasonable in the circumstances of this complaint. So, if I've not commented on, or referred to, something that either party has said, that doesn't mean I've not considered it.

What's more, I've made my decision on the balance of probabilities – which means I've 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 F 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 doesn't 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 F at the Time of Sale, the Lender is also liable.

This part of the complaint was made for two reasons that I set out at the start of this decision.

I don't think that the Supplier misrepresented the Fractional Club membership end date. I say this because of the lack of detail from Mr and Mrs F as to what they were told, by whom and in what circumstances about the Fractional Club membership end date that, in their opinion, constituted a misrepresentation.

I'm also not persuaded by the allegation that the Supplier told Mr and Mrs F that they had to buy the fractional membership in order to exit their existing membership. Again I say this because of the lack of detail from Mr and Mrs F as to what they were told, by whom and in what circumstances in this respect that, in their opinion, constituted a misrepresentation.

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

For these reasons, therefore, I don't think the Lender is liable to pay Mr and Mrs F any compensation for the alleged misrepresentations of the Supplier. And with that being the case, I don't 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 how Section 75 of the CCA works and why it gives Mr and Mrs F 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 F say that the Supplier breached the Purchase Agreement because there is no guarantee that they will receive their share of the net sale proceeds of the Allocated Property. I understand that they are saying that they fear that, when the time comes for the Allocated Property to be sold, they 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.

I can't see that the Supplier has breached the contract with regard to fees. But for the sake of completeness I consider the issue of fees further under the section that follows.

Overall, therefore, from the evidence I've seen to date, I don't think the Lender is liable to pay Mr and Mrs F any compensation for a breach of contract by the Supplier. And with that being the case, I don't 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've already explained why I'm not persuaded that the contract entered into by Mr and Mrs F 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 Mr and Mrs F also say 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's 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's fair and reasonable in all the circumstances of the case, I will consider whether the credit relationship between Mr and Mrs F 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 F's membership of the Fractional Club 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.

What's more, the scope of that responsibility extends to both acts and omissions by the Supplier as the Supreme Court in Plevin made clear when it referred to 'acts or omissions' when discussing Section 56. And as Section 56(3)(b) says that an applicable agreement can't try to relieve a person from liability for 'acts or omissions' of any person acting as, or on behalf of, a negotiator, it must follow that the reference to 'omissions' would only be necessary because they can be attributed to the creditor under Section 56.

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.

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

I've considered the entirety of the credit relationship between Mr and Mrs F and the Lender along with all of the circumstances of the complaint and I don't 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've 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've then considered that on the fairness of the credit relationship between Mr and Mrs F and the Lender.

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

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

PR says that the right checks weren't carried out before the Lender lent to Mr and Mrs F. I haven't seen anything to persuade me that was the case in this complaint given its circumstances. But even if I were to find that the Lender failed to do everything it should have when it agreed to lend (and I make no such finding), I would have to be satisfied that the money lent to Mr and Mrs F was actually unaffordable before also concluding that they lost out as a result and then consider whether the credit relationship with the Lender was unfair to them for this reason. Again, from the information provided, I'm not satisfied that the lending was unaffordable for Mr and Mrs F. If there is any further information on this (or any other points raised in this provisional decision) that the Mr and Mrs F wish to provide, I would invite them to do so in response to this provisional decision.

Mr and Mrs F say that they were pressured by the Supplier into taking finance with the Lender. 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 that they had no choice but to finance their purchase by way of loan with the Lender if they simply didn't want to. They were also given a 14-day cooling off period and they haven't provided a credible explanation for why they didn't cancel their membership (and the loan) during that time. And with all of that being the case, there is insufficient evidence to demonstrate that Mr and Mrs F made the decision to purchase Fractional Club membership by taking finance with the Lender because their ability to exercise that choice was significantly impaired by pressure from the Supplier.

PR also says that there is an unfair term in the membership agreement so that membership would be forfeited on non-payment of fees, such a term being found to be unfair in the judgment of *Wilson*. However, even if there was such a term, I'm not satisfied that led to an unfairness. That's because I can't see that any such term was operated unfairly against Mr and Mrs F, nor can I see that the existence of any term like that caused them to act in a way that might've caused an unfairness.

PR further says that the sale breached EU law, however it's not explained on what basis it alleged that. Having considered all of the evidence, I can't see what law was allegedly breached, nor can I see there was an unfair debtor-creditor relationship for any other reason.

I'm not persuaded, therefore, that Mr and Mrs F'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, perhaps the main reason, why they say their credit relationship with the Lender was unfair to them. And that's the suggestion that Fractional Club membership was marketed and sold to them as an investment in breach of prohibition against selling timeshares in that way.

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

The Lender doesn't dispute, and I'm satisfied, that Mr and Mrs F's Fractional Club 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 Fractional Club 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 says that the Supplier did exactly that at the Time of Sale. So, that is what I've considered next.

The term "investment" isn't 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 F'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 Club membership included an investment element didn't, 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 didn't ban the sale of 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 Mr and Mrs F as an investment in breach of Regulation 14(3), I've to be persuaded that it was more likely than not that the Supplier marketed or sold membership to them as an investment, i.e. told them or led them 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 evidence in this complaint that the Supplier made efforts to avoid specifically describing membership of the Fractional Club as an 'investment' or quantifying to prospective purchasers, such as Mr and Mrs F, 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, as I understand it, disclaimers in the contemporaneous paperwork that state that Fractional Club membership wasn't sold to Mr and Mrs F 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 Fractional Club membership as an investment. And while that wasn't alleged by either Mr and Mrs F or their PR when they first complained about a credit relationship with the Lender that was unfair to them, I accept that it's possible that Fractional Club 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 Club membership without breaching the relevant prohibition.

But, having considered everything, I don't think I need to make a firm finding on that point. I say that because, for the reasons I'll come on to, I don't think there was an unfair debtor-creditor relationship even if Fractional Club membership was sold as an investment.

Was there an unfair relationship between the Lender and Mr and Mrs F?

As the Supreme Court's judgment in Plevin makes clear, it doesn't 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'm 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'm to conclude that a breach of Regulation 14(3) led to a credit relationship between Mr and Mrs F and the Lender that was unfair to them and warranted relief as a result, whether the Supplier's breach of Regulation 14(3) (deemed to be something done by the Lender under section 140(1)(c) of the CCA) lead them to enter into the Purchase Agreement and the Credit Agreement is an important consideration.

While PR submitted to our service (on 28 October 2021) that Mr and Mrs F's Fractional Property membership was sold to them as a *"great investment"* and that Mr and Mrs F noted on their submitted complaint form to our service (dated 23 September 2021) that Fractional Property membership was sold as *"a guaranteed investment"* with *"profits"* coming back to them no reference to membership being sold as in investment was made in the Complaint Letter (dated 28 January 2021) to the Lender, something I might have expected to see if Fractional Club membership being sold as an investment was material to Mr and Mrs F's decision to purchase.

Put another way, as neither PR nor Mr and Mrs F suggested that Fractional Timeshare membership was sold as an investment when they made their complaint to the Lender I'm simply not persuaded that this was something that proved important to their purchase.

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'm not persuaded that Mr and Mrs F's decision to purchase Fractional Club 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 don't think the credit relationship between Mr and Mrs F and the Lender was unfair to them even if the Supplier had breached Regulation 14(3).

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

It's clear from the submissions of everyone involved in this complaint that there was a lot of information passed between the Supplier and Mr and Mrs F when they purchased membership of the Fractional Club membership at the Time of Sale. But they and PR say that the Supplier failed to provide them with all of the information they needed to make an informed decision.

PR also says that the contractual terms governing the ongoing costs of the Fractional Club membership and the consequences of not meeting those costs were unfair contract terms under the UTCCR.

One of the main aims of the Timeshare Regulations and the UTCCR was to enable consumers to understand the financial implications of their purchase so that they were put in the position to make an informed decision. And if a supplier's disclosure and/or the terms of a contract didn't recognise and reflect that aim, and the consumer ultimately lost out or almost certainly stands to lose out from having entered into a contract whose financial implications they didn't fully understand at the time of contracting, that may lead to the Timeshare Regulations and the UTCCR being breached, and, potentially the credit agreement being found to be unfair under s.140A CCA.

However, as I've said before, the Supreme Court made it clear in *Plevin* that it doesn't automatically follow that regulatory breaches create unfairness for the purposes of s.140A CCA. The extent to which such mistakes render a credit relationship unfair must also be determined according to their impact on the complainant.

Here, I've not been provided with any evidence that the fees that Mr and Mrs F were required to pay either increased in a manner that caused an unfairness, nor have I seen anything to suggest that any other terms have been operated unfairly against them. Moreover, as I've not seen anything else to suggest that there are any other reasons why the credit relationship between the Lender and Mr and Mrs F was unfair to them because of an information failing by the Supplier, I'm not persuaded it was.

Section 140A: Conclusion

In conclusion, therefore, given all of the facts and circumstances of this complaint, I don't think the credit relationship between the Lender and Mr and Mrs F 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.

Conclusion

In conclusion, given the facts and circumstances of this complaint, I don't think that the Lender acted unfairly or unreasonably when it dealt with Mr and Mrs F's Section 75 claims, and I'm 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 see no other reason why it would be fair or reasonable to direct the Lender to compensate them.

The Lender accepted my provisional findings but the PR didn't respond to them by an extended date I gave it to do so by.

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.

Given that the Lender accepted my provisional findings and the PR didn't respond to them by the extended date I gave for it to do so by, I can confirm I see no reason to depart from those findings and I now confirm them as final.

My final decision

My final decision is I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs F to accept or reject my decision before 28 July 2025.

Peter Cook
Ombudsman