DRN-5649163

The complaint

Mr and Mrs B'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 B purchased membership of a timeshare (the 'Fractional Club') from a timeshare provider (the 'Supplier') on 8 April 2013 (the 'Time of Sale'). They entered into an agreement with the Supplier to buy 1,716 fractional points at a cost of £22,802 (the 'Purchase Agreement'). But after trading in their existing timeshare, they ended up paying £6,753 for membership of the Fractional Club.

The Supplier says Mr and Mrs B firstly purchased a trial membership in 2011 and later in that year proceeded to purchase a Fractional Club membership, giving them 1,290 fractional points. These purchases were not funded by the Lender, so I won't be commenting on these purchases in my decision.

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

Mr and Mrs B paid for their Fractional Club membership by taking finance of £6,753 from the Lender (the 'Credit Agreement').

Mr and Mrs B – using a professional representative (the 'PR') – wrote to the Lender on 28 December 2018 (the 'Letter of Complaint') to complain about the events that happened at the Time of Sale. The PR says (in full):

"Our clients were members of [the Supplier's] Points system. At first our clients were happy with [the Supplier] but with the ever increasing maintenance fees and increasing lack of availability when and where they wanted to holiday. The main problem was that the points were until 2069, as their family did not want them they tried to sell their points. Unfortunately this was impossible and so they approached [the Supplier] when on holiday in Tenerife in April 2013.

They were told by a [Supplier's] representative that the only way to get out of points was to buy into [the Supplier's] Fractional Timeshare.

This gave them an option to sell the fractional in 19 years and get a return on their money they were as they were desperate to find a solution and also the fact that [the Supplier] told them that if for whatever reason they passed away at least then their children would get a return on the 19th year so it acted like a pension fund for them or an inheritance for their children. So they agreed to go ahead and bought 2 weeks at Marina Del Rey which also gave them 1716 points instead of 1501 points that they had before.

Our clients have since found out that firstly it is illegal to buy timeshare under the new timeshare act 2012 as an investment and looking at the paperwork It states in the contract that they will only sell Fractions if the client buys into a Freehold Property with [the Supplier].

[The Supplier] deny selling this fractional as an investment … and say the clients only bought for their holidays.

So why would a client spend £6753 buying only 215 amount of points it doesn't make sense.

To top everything off they discovered they could have simply handed the Points back and been out of the maintenance trap. They are very angry and believe they have been totally missold.

Also, in trying to use their holidays they are finding it extremely difficult to book holidays now as there is hardly any availability due to [the Supplier] being advertised on the internet […] at a much reduced rate than [the Supplier's] members are paying in maintenance fees. They also feel that this situation will only worsen, in view of the very extensive television from [the Supplier].

They feel very badly let down by the lies which they were subjected to and are, therefore, claiming a full refund under Section 75/ section 75A of the Consumer Credit Act of 1974 as this product was definitely mis-sold to them.

We enclose all relevant documents and signed Letter of Authorisation."

The Lender dealt with Mr and Mrs B's concerns as a complaint and issued its final response letter on 7 February 2019, rejecting it on every ground.

Mr and Mrs B then referred the complaint to the Financial Ombudsman Service. Prior to our Investigator's opinion, PR sent us an email outlining further concerns Mr and Mrs B had. The PR said the upgraded contract did not offer Mr and Mrs B any additional benefits and simply meant Mr and Mrs B continued to have access to the points they already held but with a shortened duration and with the opportunity to sell their asset backed investment for a large profit. The PR stated that their Fractional Club membership did not fall within the definition of a timeshare contract but as a Collective Investment Scheme ('CIS'), something the Supplier was not qualified nor authorised to do. PR also asked for this complaint to be considered under section 140A of the CCA.

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

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

On 14 May 2025, I spoke to Mr and Mrs B directly over the telephone.[1] Mr and Mrs B recall being told by the Supplier that it would be beneficial increasing their points as it would give them more options. They say it would offer them better availability also having access to a wider range of resorts due to having access to resorts not owned by the Supplier. They also recall a tier points system and said they were told they would receive upgraded accommodation. Mr and Mrs B also discussed being told they would become property owners and would receive some of their money back. They say they were told by increasing their points, it would result in a "*bigger comeback*" and "*better portion of the money that they*

[1] I attached a copy of the call recording when I issued my provisional decision

spent". They say it seemed like a pension investment for them (or their sons upon their passing).

I considered the matter and issued a provisional decision on 11 June 2025. In that decision I said:

"The legal and regulatory context

In considering what is fair and reasonable in all the circumstances of the complaint, I am required under DISP 3.6.4R to take into account: relevant (i) law and regulations; (ii) regulators' rules, guidance and standards; and (iii) codes of practice; and (where appropriate), what I consider to have been good industry practice at the relevant time.

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.*
- *Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010 (the 'Timeshare Regulations').*
- *The Unfair Terms in Consumer Contract Regulations 1999.*
- *The Consumer Protection from Unfair Trading Regulations 2008.*
- *Case law on Section 140A of the CCA – including, in particular:*

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

Good industry practice – the RDO Code

The Timeshare Regulations provided a regulatory framework. But as the parties to this complaint already know, I am also required to take into account, when appropriate, what I consider to have been good industry practice at the relevant time – which, in this complaint, includes the Resort Development Organisation's Code of Conduct dated 1 January 2010 (the 'RDO Code').

My provisional findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

And having done that, I do not currently think this complaint should be upheld. I have made my decision on the balance of probabilities – which means I have based it on what I think is more likely than not to have happened given the available evidence and the wider circumstances.

Section 75 of the CCA: the Supplier's misrepresentation 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 B could make against the Supplier.

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

Mr and Mrs B claim that the Fractional Club membership had been misrepresented by the Supplier because they were told the only way to get out their previous membership, which lasted until 2069, was to buy a Fractional Club membership. The Supplier has said that Mr and Mrs B held a Fractional Club membership in 2011 and later upgraded to another Fractional Club membership which is the subject of this complaint - obtaining more points.

Their previous membership did not last until 2069 and it is likely this would have been evident from the documentation Mr and Mrs B were supplied with in 2011. The effect of upgrading at the Time of Sale extended the term of their current membership with the Supplier so I don't think it's probable that the sales representatives would have made such a representation at the Time of Sale. Whilst I do not doubt Mr and Mrs B provided their honest recollections, this does not seem to be supported with the events that occurred at the Time of Sale.

There's nothing on file that persuades there was a false statement of existing fact made to Mr and Mrs B by the Supplier at the Time of Sale, so I do not think there was an actionable misrepresentation by the Supplier for the reason they allege.

For these reasons, therefore, I do not think the Lender is liable to pay Mr and Mrs B any compensation for the alleged misrepresentation of the Supplier. And with that being the case, I do not think the Lender acted unfairly or unreasonably when it dealt with the Section 75 claim in question.

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

I've already summarised how Section 75 of the CCA works and why it gives Mr and Mrs B 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 B allege in their Letter of Complaint that they have found booking holidays extremely difficult due to the Supplier's decision to advertise its resorts to those who are not members with the Supplier – which, on my reading of the complaint, suggests that they think the Supplier was not living up to its end of the bargain, potentially breaching the terms of the Purchase Agreement.

Having spoken to Mr and Mrs B, they told me that they had tried booking a holiday and there was not any availability, so they didn't attempt to use their membership again. 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 Mr and Mrs B state that the availability of holidays were/is subject to demand. While I accept that they may not have been able to book the holiday they wanted to, I don't think this meant that they wouldn't have been able to use their membership at another resort or at a different time of year up until their membership was suspended in 2017. Thinking about this. I have not seen enough to persuade me that the Supplier had breached the terms of the Purchase Agreement.

Overall, therefore, from the evidence I have seen to date, I do not think the Lender is liable to pay Mr and Mrs B any compensation for a breach of contract by the Supplier. And with that being the case, I do not think the Lender acted unfairly or unreasonably when it dealt with the Section 75 claim in question.

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

I have already explained why I am not persuaded that the contract entered into by Mr and Mrs B 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.

Mr and Mrs B have also set out several other reasons why they are unhappy with their Fractional Club membership during the course of their complaint, which as I've mentioned, I've interpreted Mr and Mrs B's complaint as being that the credit relationship between them and the Lender was unfair under Section 140A of the CCA, when looking at all the circumstances of the case, including parts of the Supplier's sales process at the Time of Sale that they have concerns about. It is those concerns that I explore here.

As Section 140A of the CCA is relevant law, I do have to consider it. So, in determining what is fair and reasonable in all the circumstances of the case, I will consider whether the credit relationship between the Mr and Mrs B 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 B'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.140A(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."[2]

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

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

case of Smith), that determining whether or not the relationship complained of was unfair had to be made "having regard to the entirety of the relationship and all potentially relevant matters up to the time of making the determination" – which was the date of the trial in the case of an existing credit relationship or otherwise the date the credit relationship ended.

The breadth of the unfair relationship test under Section 140A, therefore, is stark. But it isn't a right afforded to a debtor simply because of a breach of a legal or equitable duty. As the Supreme Court said in Plevin (at paragraph 17):

"Section 140A […] does not impose any obligation and is not concerned with the question whether the creditor or anyone else is in breach of a duty. It is concerned with […] whether the creditor's relationship with the debtor was unfair."

Instead, it was said by the Supreme Court in Plevin that the protection afforded to debtors by Section 140A is the consequence of all of the relevant facts.

I have considered the entirety of the credit relationship between Mr and Mrs B 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; and*
2. *The provision of information by the Supplier at the Time of Sale, including the contractual documentation and disclaimers made by the Supplier;*
3. *Evidence provided by both parties on what was likely to have been said and/or done at the Time of Sale;*
4. *The inherent probabilities of the sale given its circumstances.*

I have then considered the impact of these on the fairness of the credit relationship between Mr and Mrs B and the Lender in light of the allegation that Fractional Club membership was marketed and sold to them as an investment in breach of prohibition against selling timeshares in that way.

<u>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?</u>

I'm aware PR emailed our service after Mr and Mrs B's complaint was referred to us and stated that this membership did not offer any additional benefits to their clients and only continued the rights they already held but with a shortened duration. But that is not the case as Mr and Mrs B did acquire additional holiday rights when they purchased their Fractional Club membership in 2013. And as I mentioned, Mr and Mrs B already held Fractional Club membership previously so the effect of upgrading in 2013 essentially extended the length of their membership with the Supplier.

PR also set out why they considered Fractional Club membership to be a CIS. It's crucial for me to take into account the conclusion reached in Shawbrook & BPF v FOS, in particular paragraphs 39 – 54. In short, a timeshare contract is not classified as a CIS, so I'm satisfied that Mr and Mrs B's Fractional Club membership met the definition of a "timeshare contract" and was a "regulated contract" for the purposes of the Timeshare Regulations.

I will now address the question of whether Fractional Club membership was marketed and sold as an investment as alleged by Mr and Mrs B in the Letter of Complaint and also in the email sent by PR.

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 have considered next.

The term "investment" is not defined in the Timeshare Regulations. In Shawbrook & BPF v FOS, the parties agreed that, by reference to the decided authorities, "an investment is a transaction in which money or other property is laid out in the expectation or hope of financial gain or profit" at [56]. I will use the same definition.

Mr and Mrs B'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 did not, itself, transgress the prohibition in Regulation 14(3). That provision prohibits the marketing and selling of a timeshare contract <u>as an investment</u>. It doesn't prohibit the mere existence of an investment element in a timeshare contract or prohibit the marketing and selling of such a timeshare contract per se.

In other words, the Timeshare Regulations did not ban products such as the 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 B as an investment in breach of Regulation 14(3), I have to be persuaded that it was more likely than not that the Supplier marketed and/or sold membership to them as an investment, i.e. told them or led them to believe that Fractional Club membership offered them the prospect of a financial gain (i.e., a profit) given the facts and circumstances of this complaint.

I've looked at some of the paperwork given to Mr and Mrs B which have disclaimers that state Fractional Club membership was not sold to them as an investment. However, I'm also conscious that the training material suggests that the sales representative may have positioned Fractional Club membership as an investment. So, 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.

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 Mr and Mrs B rendered unfair?

As the Supreme Court's judgment in Plevin makes clear, it does not automatically follow that regulatory breaches create unfairness for the purposes of Section 140A. Such breaches and their consequences (if there are any) must be considered in the round, rather than in a narrow or technical way.

I am also mindful of what HHJ Waksman QC (as he then was) and HHJ Worster had to say in Carney and Kerrigan (respectively) on causation.

In Carney, HHJ Waksman QC said the following in paragraph 51:

"[…] In cases of wrong advice and misrepresentation, it would be odd if any relief could be considered if they did not have at least some material impact on the debtor when deciding whether or not to enter the agreement. […] in a case like the one before me, if in fact the debtors would have entered into the agreement in any event, this must surely count against a finding of unfair relationship under s140A. […]"

And in Kerrigan, HHJ Worster said this in paragraphs 213 and 214:

"[…] The terms of section 140A(1) CCA do not impose a requirement of "causation" in the sense that the debtor must show that a breach caused a loss for an award of substantial damages to be made. The focus is on the unfairness of the relationship, and the court's approach to the granting of relief is informed by that, rather than by a demonstration that a particular act caused a particular loss. Section 140A(1) provides only that the court may make an order if it determines that the relationship is unfair to the debtor. […]

[…] There is a link between (i) the failings of the creditor which lead to the unfairness in the relationship, (ii) the unfairness itself, and (iii) the relief. It is not to be analysed in the sort of linear terms which arise when considering causation proper. The court is to have regard to all the relevant circumstances when determining whether the relationship is unfair, and the same sort of approach applies when considering what relief is required to remedy that unfairness. […]"

So, it seems to me that, if I am to conclude that a breach of Regulation 14(3) led to a credit relationship between Mr and Mrs B and the Lender that was unfair to them and warranted relief as a result, whether the Supplier's breach of Regulation 14(3) which, having taken place during its antecedent negotiations with Mr and Mrs B, is covered by Section 56 of the CCA, falls within the notion of "any other thing done (or not done) by, or on behalf of, the creditor" for the purposes of 140(1)(c) of the CCA and deemed to be something done by the Lender) lead them to enter into the Purchase Agreement and the Credit Agreement is an important consideration.

So, I have taken all of that into account. However, on my reading of the evidence provided and Mr and Mrs B's recollections of the sales process at the Time of Sale, I'm not satisfied that any breach of Regulation 14(3) had a material impact on their purchasing decision. In the Letter of Complaint, Mr and Mrs B stated that they would "get a return on their money", but no more context was given about what was said or whether Mr and Mrs B expected to get back more than the cost of membership. I had some concerns over the Letter of Complaint as a whole for instance Mr and Mrs B stated that their previous membership was

due to expire in 2069 but this was simply not the case. This led to me having a conversation with Mr and Mrs B to understand their complaint. They said they recall being told by the Supplier that they would receive the net sale proceeds of their share in the Allocated Property once their Fractional Club membership ended. This seems to be a description of how the Fractional Club membership and the eventual sale of the Allocated Property worked. At no point did Mr and Mrs B say or suggest that the Supplier led them to believe that their Fractional Club membership would lead to a financial gain (i.e., a profit). Instead, they say they were told by upgrading that they would "get a better portion of their money back". They went on to describe how they believe the Supplier referred to "getting some money back".

So, while PR now argues that the Supplier marketed and sold Fractional Club membership to Mr and Mrs B as an investment which provided a large profit at the end of the term, following the outcome of Shawbrook & BPF v FOS, I don't recognise that assertion in their initial recollections of the sale nor their most recent recollections as described above. And, had that been an important reason behind their decision to purchase, I'd have expected that to have formed a clearer part of their complaint.

The Letter of Complaint was put together much closer to the Time of Sale and is, in my view, likely to be a better reflection of what they remember of the sales process at that time and why they were unhappy. Mr and Mrs B mentioned they would "get a return on their money" and having spoken to them, they didn't recall the Supplier quantifying the financial value of their share in the net sales proceeds of the Allocated Property. They went on to explain that they would "get a better portion of their money back". This doesn't suggest to me that they were told or led to believe at the Time of Sale that membership offered them the prospect of a financial gain i.e. a profit.

In my telephone conversation with Mr and Mrs B, they recall being told it would be beneficial to take more points as this would provide them with more options. They went on to explain that by increasing their points, this would lead to better availability of holidays and access to resorts not owned by the Supplier. They recalled a tier system based on the number of points owned. I've looked at various documents provided to us by the Supplier and I can see members were grouped into membership levels according to the number of points they owned. In Mr and Mrs B's case, they went from being Silver members to Gold providing them with additional benefits such as two free upgrades a year. This appears to be consistent with what Mr and Mrs B recall so, to me, it seems like this could have been an important factor in their decision to upgrade their previous membership.

Therefore, on balance, 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 Mr and Mrs B'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), given what they have said. On the contrary, I think the evidence suggests they would have pressed ahead with their purchase whether or not there had been a breach of Regulation 14(3). And for that reason, I do not think the credit relationship between Mr and Mrs B and the Lender was unfair to them even if the Supplier had breached Regulation 14(3).

Section 140A: Conclusion

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

So, overall, given the facts and circumstances of this complaint, I do not think that the Lender acted unfairly or unreasonably when it dealt with Mr and Mrs B's Section 75 claims, and I am 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.

PR on behalf of Mr and Mrs B confirmed receipt of my provisional decision but they did not provide any further evidence or arguments they wished to be considered within the timeframe I set in my provisional decision.

The Lender did not respond to my provisional 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.

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

My final decision

For these reasons, I do not uphold Mr and Mrs B's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs B to accept or reject my decision before 24 July 2025.

Sameena Ali
Ombudsman