

The complaint

Mr and Mrs M's complaint is, in essence, that First Holiday Finance Ltd (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 a claim under Section 75 of the CCA.

What happened

Mr and Mrs M purchased membership of a timeshare (the 'Fractional Club') from a timeshare provider (the 'Supplier') on 13 September 2016 (the 'Time of Sale'). They entered into an agreement with the Supplier to buy 780 fractional points at a cost of £13,633 (the 'Purchase Agreement').

Fractional Club membership was asset backed – which meant it gave Mr and Mrs M 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 M paid for their Fractional Club membership by paying a £500 deposit and taking finance for the remaining amount of £13,133 from the Lender in both of their names (the 'Credit Agreement').

Mr and Mrs M – using a professional representative (the 'PR') – wrote to the Lender on 30 October 2019 (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. 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.

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

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

1. told them that purchasing Fractional Club membership was the only way they could exit their existing membership and if they didn't purchase, they and/or their children/family would be tied into financial obligations for a considerable period when that was not true.
2. told them that Fractional Club membership had a guaranteed end date when that was not true.
3. told them that the Supplier's holiday resorts were exclusive to its members when that was not true.

Mr and Mrs M say that they have a claim against the Supplier in respect of one or more 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

Mr and Mrs M.

(2) 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 M 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 contractual terms setting out (i) the duration of their Fractional Club membership and/or (ii) the obligation to pay annual management charges for the duration of their membership were unfair contract terms under the Unfair Terms in Consumer Contracts Regulations 1999 (the 'UTCCR').¹
2. The Lender paid the Supplier commission but this was not disclosed to Mr and Mrs M.
3. They were pressured into purchasing Fractional Club membership by the Supplier.
4. The decision to lend was irresponsible because the Lender didn't carry out the right creditworthiness assessment. And no choice of finance provider was given to Mr and Mrs M.

The Lender dealt with Mr and Mrs M's concerns as a complaint and issued its final response letter on 10 February 2020, rejecting it on every ground.

The PR, on behalf of Mr and Mrs M then referred the complaint to the Financial Ombudsman Service. It was assessed by an Investigator who, having considered the information on file, rejected the complaint on its merits.

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

I issued a provisional decision in which I made the following provisional findings (which form part of this final decision):

"Section 75 of the CCA: the Supplier's misrepresentations at the Time of Sale"

As both sides may already know, a claim against the Lender under Section 75 essentially mirrors the claim Mr and Mrs M could make against the Supplier. Certain conditions must be met if this protection is engaged – which are set out in the CCA. The Lender does not dispute that the relevant conditions are met in this complaint and I'm satisfied that they are.

This part of the complaint was made for several reasons that I set out at the start of this decision. They include the suggestion that Fractional Club membership had been misrepresented by the Supplier because Mr and Mrs M were told that it had a guaranteed end date when that was not true. But, I can't see that what the Supplier is alleged to have said here was actually untrue. I've not seen anything which makes me think that the Allocated Property would not be able to be sold at the conclusion of the contract period. The Terms and Conditions generally set out that the title to the property is held by independent trustees, the sale of the Allocated Property can only be carried out by the Trustees on or after the proposed sale date, and the Allocated Property cannot be removed from the trust before that sale date. What's more, the sale date can only be delayed by the unanimous

¹ The PR raised this under the heading of a breach of contract claim, but this doesn't appear to be the complaint they are making here, so I will address it under their complaint of an unfair credit relationship accordingly. The PR also referred to the UTCCRs here, but based on the date of sale it is the Consumer Rights Act 2015 (the 'CRA') that in fact applies.

written consent of all fractional owners, in which Mr and Mrs M are included. I also note that this alleged misrepresentation isn't something Mr M has mentioned in his witness statement.

As for the rest of the Supplier's alleged pre-contractual misrepresentations, while I recognise that Mr and Mrs M have concerns about the way in which their Fractional Club membership was sold, they have not persuaded me that there was an actionable misrepresentation by the Supplier at the Time of Sale for the other reasons they allege. And I say that because beyond the bare allegation in the Letter of Complaint, they provide little evidence to support them, such as what exactly they were told, by whom and in what context. I also note that these other misrepresentations aren't described by Mr and Mrs M in their witness testimony.

Further, their allegations about being told that purchasing Fractional Club membership was the only way they could exit their existing membership and if they didn't they and/or their children or family would be tied into financial obligations for a considerable period seem inherently unlikely to have been made, given that the Supplier has confirmed their previous membership was a trial membership and therefore by its nature had a set end date and would only be in place for a relatively short time.

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

For these reasons, therefore, I do not think the Lender is liable to pay Mr and Mrs M 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 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 M was misrepresented 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 M 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 is those concerns that I explore here.

I have considered the entirety of the credit relationship between Mr and Mrs M 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 M and the Lender.

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

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

The PR says that the right checks weren't carried out before the Lender lent to Mr and Mrs M. 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 M 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 am not satisfied that the lending was unaffordable for Mr and Mrs M. If there is any further information on this (or any other points raised in this provisional decision) that Mr and Mrs M wish to provide, I would invite them to do so in response to this provisional decision.

The PR also said Mr and Mrs M weren't given any choice of finance provider. But I can't see that the Supplier was acting in an advisory capacity in this regard and since they paid a deposit at the Time of Sale, it would seem likely Mr and Mrs M were aware of other options for paying for their purchase. The PR also hasn't explained how exactly this has caused an unfairness in this particular case.

Mr and Mrs M say that they were pressured by the Supplier into purchasing Fractional Club membership at the Time of Sale. I acknowledge that they may have felt weary after a sales process that went on for a long time. But they say little about what was said and/or done by the Supplier during their sales presentation that made them feel as if they had no choice but to purchase Fractional Club membership when they simply did not want to. They were also given a 14-day cooling off period and they have not provided a credible explanation for why they did not cancel their membership during that time. Indeed, they've said they were intending to cancel within that period but 'simply forgot'. And with all of that being the case, there is insufficient evidence to demonstrate that Mr and Mrs M made the decision to purchase Fractional Club membership because their ability to exercise that choice was significantly impaired by pressure from the Supplier.

The PR also suggested that the contractual terms relating to the duration of Mr and Mrs M's membership and the obligation to pay management fees for that duration were unfair.

One of the main aims of the Timeshare Regulations and the CRA was to enable consumers to understand the financial implications of their purchase so that they were/are put in the position to make an informed decision. And if a supplier's disclosure and/or the terms of a contract did not 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 CRA being breached, and, potentially the credit agreement being found to be unfair under Section 140A of the CCA.

However, the Supreme Court made it clear in Plevin² that it does not automatically follow that regulatory breaches create unfairness for the purposes of Section 140A of the CCA. The extent to which such mistakes render a credit relationship unfair must also be determined according to their impact on the complainant.

So, to conclude that a term in the Purchase Agreement rendered the credit relationship between Mr and Mrs M and the Lender unfair to them, I'd have to see that the term was

² *Plevin v Paragon Personal Finance Ltd* [2014] UKSC 61 ('Plevin')

unfair under the CRA, and that the term was actually operated against Mr and Mrs M in practice.

*In other words, it's important to consider what real-world consequences, in terms of harm or prejudice to Mr and Mrs M, have flowed from such a term, because those consequences are relevant to an assessment of unfairness under Section 140A. For example, the judge in *Link Financial v Wilson* [2014] EWHC 252 (Ch) attached importance to the question of how an unfair term had been operated in practice: see [46].*

As a result, I don't think the mere presence of a contractual term that was/is potentially unfair is likely to lead to an unfair credit relationship unless it had been applied in practice.

Having considered everything that has been submitted, it seems unlikely to me that the contract term(s) cited by Mr and Mrs M have led to any unfairness in the credit relationship between them and the Lender for the purposes of Section 140A of the CCA.

And in any case, the PR hasn't explained why exactly they feel these terms cause an unfairness apart from saying there is a lack of guaranteed end date for the membership, which I've already addressed above regarding their claim for misrepresentations. They've also suggested the effect of the clauses in relation to the annual management charges was not explained to Mr and Mrs M at the Time of Sale, either fully or at all. But, the Information Statement generally provided at the Time of Sale, does explain that purchasers would be required to pay a management fee each year. And that this would be required in order to contribute to the cost of management, repair and maintenance of the Allocated Property. It also said the charges would be divided between the fractional owners in proportion to the number of weekly periods they were entitled to use each year. And, the charges would be decided annually and be subject to increase or decrease according to the costs of managing the club. It also explained the fees would be due annually in advance each year. In my view this is reasonable, and it seems likely to me that this was explained to Mr and Mrs M at the Time of Sale – they've confirmed in their testimony this information was included in the sales paperwork they received at the Time of Sale.

The PR also said that commission was paid to the Supplier by the Lender at the Time of Sale and because this was not disclosed to Mr and Mrs M, this made the credit relationship unfair. But the PR has not provided any evidence that this was the case, and the Lender has confirmed that they did not pay any commission to the Supplier.

I'm not persuaded, therefore, that Mr and Mrs M'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 and the PR 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 does not dispute, and I am satisfied, that Mr and Mrs M'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 have considered next.

The term "investment" is not defined in the Timeshare Regulations. In Shawbrook & BPF v FOS³, 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 M'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 as an investment. It doesn't prohibit the mere existence of an investment element in a timeshare contract or prohibit the marketing and selling of such a timeshare contract per se.

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

To conclude, therefore, that Fractional Club membership was marketed or sold to Mr and Mrs M as an investment in breach of Regulation 14(3), I have to be persuaded that it was more likely than not that the Supplier marketed and/or sold membership to 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 competing evidence in this complaint as to whether Fractional Club membership was marketed and/or sold by the Supplier at the Time of Sale as an investment in breach of regulation 14(3) of the Timeshare Regulations.

On the one hand, it is clear that the Supplier made efforts to avoid specifically describing membership of the Fractional Club as an 'investment' or quantifying to prospective purchasers, such as Mr and Mrs M, the financial value of their share in the net sales proceeds of the Allocated Property along with the investment considerations, risks and rewards attached to them. There were, for instance, disclaimers in the contemporaneous paperwork that state that Fractional Club membership was not sold to Mr and Mrs M as an investment. So, it's possible that Fractional Club membership wasn't marketed or sold to them as an investment in breach of Regulation 14(3).

³ *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').

On the other hand, 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. So, I accept that it's equally possible that Fractional Club membership was marketed and sold to Mr and Mrs M as an investment in breach of Regulation 14(3).

However, whether or not there was a breach of the relevant prohibition by the Supplier is not ultimately determinative of the outcome in this complaint for reasons I will come on to shortly. And with that being the case, it is 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 M rendered unfair to them?

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.

And in light of what the courts had to say in Carney and Kerrigan, 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 M and the Lender that was unfair to them and warranted relief as a result, whether the Supplier's breach of Regulation 14(3) led them to enter into the Purchase Agreement and the Credit Agreement is an important consideration.

In this case, the PR has provided a witness statement signed by Mr and Mrs M. This is not dated but was provided when the complaint was first referred to this Service.

And, in this statement, I note that Mr and Mrs M have said:

"We were shown online reviews praising [the Supplier], told that it was a great investment and offered free drinks. However, we were not interested in this agreement."

I acknowledge that they have used the word 'investment' here, but there is no suggestion in their recollections that the Supplier led them to believe that the membership would or could make them a financial gain i.e. a profit, nor is there any indication they were induced into the purchase on that basis, particularly since (as outlined above), they've said they were not interested in purchasing after being told this.

Further, the emphasis of the rest of Mr and Mrs M's testimony is the Supplier's focus at the Time of Sale on the holidays the membership offered, and how they say that has not lived up to their expectations which it seems is what led to their complaint.

Mr and Mrs M also say several times throughout their testimony that they told the Supplier they did not want to purchase. Then, they decided they would agree to it in order to end the sales process but would cancel during the 14 day cooling off period which again, they've said they "simply forgot" to do.

On balance, therefore, even if the Supplier had marketed or sold the Fractional Club membership as an investment in breach of Regulation 14(3) of the Timeshare Regulations, I am not persuaded that Mr and Mrs M'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). There is simply no evidence to support this. 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 M 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 M 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."

I also indicated that I would provide my findings on the issue of commission once I knew more about that given the circumstances of Mr and Mrs M's complaint. I did that by email on 19 November 2025, saying:

"In my provisional decision, I noted that one of Mr and Mrs M's other concerns related to the alleged payment of commission by the Lender to the Supplier for acting as a credit broker and arranging the Credit Agreement. I explained in my provisional decision that the Lender has confirmed that they did not pay any commission to the Supplier.

But as both sides will already know, the Supreme Court handed down an important judgment on 1 August 2025 in a series of cases concerned with the issue of commission: Johnson v FirstRand Bank Ltd, Wrench v FirstRand Bank Ltd and Hopcraft v Close Brothers Ltd [2025] UKSC 33 ('Hopcraft, Johnson and Wrench').

In light of this, I'm outlining my thoughts on this issue in this letter so that both parties have the opportunity to respond before I finalise my decision.

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.

The legal and regulatory context that I think is relevant to this complaint is, in many ways, no different to that shared in several hundred published ombudsman decisions on very similar complaints – which can be found on the Financial Ombudsman Service's website. And with that being the case, it is not necessary to set out that context in detail here. But I would add that the following regulatory rules/guidance are also relevant:

The Consumer Credit Sourcebook ('CONC') – Found in the Financial Conduct Authority's (the 'FCA') Handbook of Rules and Guidance

Below are the most relevant provisions and/or guidance as they were at the relevant time:

- CONC 3.7.3 [R]
- CONC 4.5.3 [R]
- CONC 4.5.2 [G]

The FCA's Principles

The rules on consumer credit sit alongside the wider obligations of firms, such as the Principles for Businesses ('PRIN'). Set out below are those that are most relevant to this complaint:

- Principle 6
- Principle 7
- Principle 8

As previously explained, the PR says that a payment of commission from the Lender to the Supplier at the Time of Sale should lead me to uphold this complaint because, simply put, information in relation to that payment went undisclosed at the Time of Sale.

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

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

1. *The size of the commission (as a percentage of the total charge for credit). In Mr Johnson’s case it was 55%. This was “so high” and “a powerful indication that the relationship...was unfair” (see paragraph 327);*
2. *The failure to disclose the commission; and*
3. *The concealment of the commercial tie between the car dealer and the lender.*

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

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

*From my reading of the Supreme Court’s judgment in *Hopcraft, Johnson and Wrench*, it sets out principles which apply to credit brokers other than car dealer–credit brokers. So, when considering allegations of undisclosed payments of commission like the one in this complaint, *Hopcraft, Johnson and Wrench* is relevant law that I’m required to consider under Rule 3.6.4 of the Financial Conduct Authority’s Dispute Resolution Rules (‘DISP’).*

*But I don’t think *Hopcraft, Johnson and Wrench* assists Mr and Mrs M in arguing that their credit relationship with the Lender was unfair to them for reasons relating to commission given the facts and circumstances of this complaint.*

Based on what I’ve seen so far, the Supplier’s role as a credit broker wasn’t a separate service and distinct from its role as the seller of timeshares. It was simply a means to an end

in the Supplier's overall pursuit of a successful timeshare sale. I can't see that the Supplier gave an undertaking – either expressly or impliedly – to put to one side its commercial interests in pursuit of that goal when arranging the Credit Agreement. And as it wasn't acting as an agent of Mr and Mrs M but as the supplier of contractual rights they obtained under the Purchase Agreement, the transaction doesn't strike me as one with features that suggest the Supplier had an obligation of 'loyalty' to them when arranging the Credit Agreement and thus a fiduciary duty.

I recognise that the Lender was and is part of the same group of companies as the Supplier. And I acknowledge that tie may not have been adequately disclosed at the Time of Sale. But I can't currently see why that renders the credit relationship between Mr and Mrs M and the Lender unfair to them – such that I should uphold the complaint. I say that because the Supplier had tried without success to find a loan with at least one other of its approved external finance companies, before the Lender agreed the loan in question. So, I'm not persuaded that Mr and Mrs M were led into a credit agreement with the Lender because it was tied in some way to the Supplier.

What's more, in stark contrast to the facts of Mr Johnson's case, as I understand it, the Lender didn't pay the Supplier any commission at the Time of Sale. And with that being the case, even if there were information failings at that time and regulatory failings as a result (which I make no formal finding on), I'm not currently persuaded that the commission arrangements between the Supplier and the Lender were likely to have led to a sufficiently extreme inequality of knowledge that rendered the credit relationship unfair to Mr and Mrs M."

So, in summary, I wasn't persuaded by any of the arguments put forward for why the credit relationship between Mr and Mrs M and the Lender was unfair to them under Section 140A of the CCA. And I couldn't see any other reason why it would be fair or reasonable to direct the Lender to compensate Mr and Mrs M – all of which led me to provisionally conclude that there was no basis on which to uphold the complaint.

The Lender accepted my provisional decision. The PR disagreed with my overall conclusion. When doing that, it provided significant submissions at first but it went on to withdraw them and replace them with more concise submissions – which, while primarily concerned with the suggestion that Mr and Mrs M's Fractional Club membership had been marketed and sold as an investment in contravention of a prohibition on selling timeshares in that way, included allegations of fraudulent misrepresentation on the basis that Mr and Mrs M were told by the Supplier at the Time of Sale that:

- (1) They were buying part ownership of a physical property;
- (2) Fractional Club membership was an investment;
- (3) The Allocated Property would be sold; and
- (4) They would receive a share of the net sales proceeds of sale when the Allocated Property is sold.

The PR also repeated its concerns about the pressure Mr and Mrs M were put under by the Supplier at the Time of Sale, the Lender's decision to lend being irresponsible and the payment of commission to the Supplier by the Lender – albeit with a focus on the Supreme Court's judgment in *Hopcraft, Johnson and Wrench*.

As a result, the complaint was passed back to me for further thought and my Final Decision.

The Legal and Regulatory Context

The legal and regulatory context that I think is relevant to this complaint has been shared in several hundred published decisions on very similar complaints, as well as in previous correspondence with the parties. So, there's no need for me to set this out again in detail here. I simply remind the parties that our rules⁴ say that in considering what is fair and reasonable in all the circumstances of the complaint, I will take into account: relevant (i) law and regulations; (ii) regulators' rules, guidance and standards; and (iii) codes of practice; and (when appropriate), what I consider to have been good industry practice at the relevant time.

What I've decided – and why

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

And having done that afresh, I'm not persuaded to depart from my provisional decision for reasons I'll now explain.

Before I do, I want to make it clear that I recognise that this complaint, when originally made, was wide ranging and made on a number of different grounds. However, as the PR's more concise response to my provisional decision only relates, in the main, to misrepresentations, whether the membership was sold as an investment, concerns about the pressure Mr and Mrs M were put under by the Supplier at the Time of Sale, the Lender's decision to lend being irresponsible and payment of commission to the Supplier by the Lender, I see no reason to change or add to my conclusions (as set out in the summary of my provisional decision above) in relation to the other points they originally raised.

Indeed, as I said in my provisional decision, my role as an Ombudsman is to decide what's fair and reasonable in the circumstances of this complaint – rather than address every single point that's been made. And with that being the case, while I have read all of the PR's submissions in full, 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's more, it is important to make the point that, in contrast to what might happen in court, neither side to this complaint has a burden of proof that it must discharge. After all, the jurisdiction under which I'm deciding this complaint is inquisitorial rather than adversarial – which means that my findings are made on the balance of probabilities, in light of the evidence and/or arguments from both sides.

So, while the PR argues in response to my provisional decision that, under Section 140B(9) of the CCA, it is for the Lender to prove that its credit relationship with Mr and Mrs M wasn't unfair simply because they allege that it was, that fails to understand that the Financial Ombudsman Service deals with complaints rather than causes of action. And, in any event, to suggest that unsubstantiated allegations of fact must be disproved by the Lender if the credit relationship isn't to be deemed unfair also oversimplifies if not misunderstands the legal position. As HHJ David Cooke said in paragraph 26 of his judgment on *Promontoria (Henrico) Ltd v. Gurcham Samra* [2019] EWHC 2327 (Ch):

“...the onus is on [the creditor] to show, to the normal civil standard, that the relationship is not unfair because of any of the reasons set out in s 140A(1)(a)-(c). Whether it is so unfair is a matter for the court's overall judgment having regard to all the relevant circumstances and matters, including matters relating (i.e. personal) to the creditor and debtor. This onus on the

⁴ Specifically Rule 3.6.4 in the Dispute Resolution Rules found in the Financial Conduct Authority's Handbook for Rules and Guidance.

*claimant does not however mean, in my judgement...that where [the borrower alleging an unfair credit relationship] makes allegations of fact on which he relies he does not have the burden of proving them to the normal civil standard. The onus placed on the creditor is as to the relationship between it and the debtor, and does not have the effect that factual allegations made by Mr Samra must be accepted unless they can be positively disproved by contrary evidence.*⁵

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

It was argued by the PR, when this complaint was first made, that the Supplier misrepresented Fractional Club membership at the Time of Sale. The reasons for this aspect of this complaint at that time were addressed in my provisional decision. And I see no reason to change or add to those. But in response to my provisional decision, the PR argues that Fractional Club membership was worthless and, as such, the following representations by the Supplier were fraudulent:

- (1) Mr and Mrs M were buying part ownership of a physical property;
- (2) Fractional Club membership was an investment;
- (3) The Allocated Property would be sold; and
- (4) They would receive a share of the net sales proceeds of sale when the Allocated Property is sold.

The PR takes that view because it says the evidence suggests that (1) any rights in the Allocated Property are personal rights rather than the rights of ownership, (2) the Lender hasn't provided any evidence that the Allocated Property exists or that it will sell in the future (making it unlikely that Mr and Mrs M will receive anything from their share in it) and, (3) by the PR's own calculations, given the initial and ongoing costs of Fractional Club membership, it was never possible to make a profit from the sale of the Allocated Property.

The law relating to misrepresentation is a combination of the common law, equity and statute – though, as I understand it, the Misrepresentation Act 1967 didn't alter the rules as to what constitutes an effective misrepresentation. Summarising the relevant pages in *Chitty on Contracts*, a material and actionable misrepresentation is an untrue statement of existing fact or law made by one party (or his agent for the purposes of passing on the representation, acting within the scope of his authority) to another party that induced that party to enter into a contract.

However, a mere statement of opinion, rather than fact or law, which proves to be unfounded, isn't a misrepresentation unless the opinion amounts to a statement of fact and it can be proved that the person who gave it did not hold it or could not reasonably have held it. It also needs to be shown that the other party understood and relied on the implied factual misrepresentation.

Telling prospective members that they were investing their money because they were buying a fraction or share of one of the Supplier's properties was not untrue – nor was it untrue to tell prospective members that they would receive *some* money when the allocated property is sold.

After all, Mr and Mrs M's share in the Allocated Property clearly 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.

⁵ As approved by the Supreme Court in *Smith v. The Royal Bank of Scotland plc* [2023] UKSC 34 – see paragraph 40.

But as the PR knows, while the term “investment” is not defined in the Timeshare Regulations, it was agreed by the parties in *Shawbrook & BPF v FOS*⁶ 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” (see paragraph 56).

Yet, contrary to what the PR says, none of the contractual paperwork made any promises that a profit might be made nor did it imply, let alone suggest, that Mr and Mrs M’s share in the net sale proceeds of the Allocated Property would be worth more in real terms in the future than at the Time of Sale.

As I said in my provisional decision, the Supplier’s training material left open the possibility 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 Mr and Mrs M as an investment orally.

But Mr and Mrs M say little about what was said, by whom and in what circumstances for the purposes of determining whether representations by the Supplier amounted to false statements of existing fact rather than expressions of honestly held opinions about the likely value of the Allocated Property in the future. And while the PR’s own calculations might cast some doubt over the likelihood of the Allocated Property being sold at a profit given the initial and ongoing costs of it to Mr and Mrs M, there isn’t enough evidence to persuade me that the relevant sales representative(s) would have carried out that sort of calculation at the Time of Sale or would otherwise have had information that would indicate that they knew or ought reasonably to have known at the time that any such representations weren’t true.

And while the PR might question the exact legal mechanism used to give prospective members an interest in allocated properties, that does not change the fact that the shares of members (like Mr and Mrs M) were clearly the purchase of a share of the net sale proceeds of a specific property in a specific resort.

I’m not persuaded, therefore, by the allegations of fraudulent misrepresentation from the PR. And with that being the case, they too aren’t reasons to uphold this complaint and direct the Lender to compensate Mr and Mrs M.

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

I’ve already explained why, in light of the PR’s latest allegations of fraudulent misrepresentation, I’m not persuaded that Fractional Club membership was actionably misrepresented by the Supplier at the Time of Sale. And it is for those reasons that I don’t think the credit relationship between Mr and Mrs M and the Lender was rendered unfair to them on the basis that membership had been misrepresented.

However, there are, of course, other reasons for why the PR argues that the credit relationship in question was unfair. But having reconsidered the entirety of that relationship along with everything that has now been said and/or provided by both sides, I still don’t think the credit relationship between Mr and Mrs M and the Lender was likely to have been rendered unfair to them for the purposes of Section 140A. When coming to that conclusion, I have looked again at:

1. The standard of the Supplier’s commercial conduct – which includes its sales and marketing practices at the Time of Sale along with any relevant training material;

⁶ *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’*).

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; and, when relevant
5. Any existing unfairness from a related credit agreement.

I have also reconsidered any commercial (including commission) arrangements between the Lender and the Supplier at the Time of Sale and the disclosure of those arrangements.

The PR continues to argue that:

1. The Lender's decision to lend to Mr and Mrs M was, in essence, irresponsible; and
2. Mr and Mrs M were pressured by the Supplier into purchasing Fractional Club membership at the Time of Sale.

In relation to the allegation of undue pressure at the Time of Sale, the PR has now provided two questionnaires completed by Mr and Mrs M in September 2019 (addressed in more detail later in this decision). And, they've pointed to certain parts of these questionnaires in support of this allegation. For example, Mr and Mrs M have said their sales presentation was ten hours long, and that they attempted to leave the sales presentation but were prevented from doing so.

I already acknowledged in my PD that Mr and Mrs M may have felt weary after a sales process that went on for a long time. But they continue to say little about what was said and/or done by the Supplier during their sales presentation that made them feel as if they had no choice but to purchase Fractional Club membership when they simply did not want to. For example, they haven't explained how exactly they were prevented from leaving the sales presentation and in their witness statement this isn't something they've said happened.

And, I return here to that fact that Mr and Mrs M were also given a 14-day cooling off period (which they've confirmed in the aforementioned questionnaire) and they have not provided a credible explanation for why they did not cancel their membership during that time. Indeed, they've said they were intending to cancel within that period but 'simply forgot'. And with all of that being the case, there remains insufficient evidence to demonstrate that Mr and Mrs M made the decision to purchase Fractional Club membership because their ability to exercise that choice was significantly impaired by pressure from the Supplier.

The PR has reiterated that they don't think the right checks were carried out before the Lender lent to Mr and Mrs M. I still haven't seen anything to persuade me that was the case in this complaint given its circumstances. But again, even if I were to find that the Lender failed to do everything it should have when it agreed to lend (and I still make no such finding), I would have to be satisfied that the money lent to Mr and Mrs M 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. In relation to this, the PR stated in response to my provisional decision that Mr and Mrs M were in an Individual Voluntary Arrangement (IVA) at the Time of Sale. I asked the PR if they could provide evidence of this, along with bank statements from the three months prior to the Time of Sale, if available. The PR provided a letter dated December 2018 which confirms Mr and Mrs M had completed an IVA but it doesn't show when this started, or evidence that this was in place at the Time of Sale. The PR confirmed that bank statements are not available due to the length of time which has passed, which is understandable. But in any event, looking

again at all of the information that *is* available, I'm simply not persuaded that the lending was unaffordable for them or that this is something which renders their credit relationship unfair to them under Section 140A.

But I'll turn now to what continues to be the main reason for the PR's assertion that the credit relationship in question was unfair.

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

As I said in my provisional decision, there is competing evidence in this complaint as to whether the Fractional Club membership was marketed and/or sold by the Supplier at the Time of Sale as an investment in breach of Regulation 14(3) of the Timeshare Regulations. I acknowledged that it was possible that Fractional Club membership was marketed and sold to Mr and Mrs M as an investment in breach of Regulation 14(3). A view I still hold.

But I also thought and still think that it isn't necessary to make a formal finding on that particular issue for the purposes of my determination on this complaint because a breach of Regulation 14(3) by the Supplier is not itself determinative of the outcome in this complaint unless the impact of such a breach suggested otherwise.

The PR disagrees with that and cites the judgment of Mrs Justice Collins Rice in *Shawbrook & BPF v FOS* in support – saying that she found that the selling of a timeshare as an investment (i.e. in a breach of Regulation 14(3) of the Timeshare Regulations) was, itself, sufficient to create an unfair credit relationship.

However, on my reading of *Shawbrook & BPF v FOS*, Mrs Justice Collins Rice didn't find that a breach of Regulation 14(3) of the Timeshare Regulations was "*causative of the legal relations entered into*". She recognised that such a breach was "*conduct that knocks away the central consumer protection safeguard*", but she went on to say that it was the ombudsmen behind the two reviewed decisions who found that such a breach was, given the facts and circumstances of the relevant complaints, causative of the consumers in question purchasing their timeshares and taking out loans to do so.

What's more, the Supreme Court's judgment in *Plevin* makes it clear that regulatory breaches do not automatically 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 v NM Rothschild & Sons Ltd* [2018] EWHC 958 ('*Carney*') and *Kerrigan v Elevate Credit International Ltd* [2020] EWHC 2169 (Comm) ('*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 still 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 M and the Lender that was unfair to them and warranted relief as a result, whether the Supplier's breach of Regulation 14(3) led them to enter into the Purchase Agreement and the Credit Agreement is an important consideration.

Indeed, doing that accords with common sense, for if events would have unfolded in the same way whether or not such a pre-contractual breach had occurred, it would be difficult to attribute any particular importance to the breach when deciding whether an unfair debtor-creditor relationship ensued, or whether a remedy is appropriate.

If there had been a breach of Regulation 14(3), would it have rendered the credit relationship between Mr and Mrs M and the Lender unfair to them?

Having found that it was possible that the Supplier breached Regulation 14(3) of the Timeshare Regulations at the Time of Sale, I have considered (as I did in my provisional decision) what impact that breach (if there was one) had on the fairness of the credit relationship between Mr and Mrs M and the Lender under the Credit Agreement and related Purchase Agreement.

And on my re-reading of the evidence before me, I'm still not persuaded that the prospect of a financial gain from Fractional Club membership was an important and motivating factor when Mr and Mrs M decided to go ahead with their purchase to the extent that they would have made an entirely different purchasing decision had there not been a breach of Regulation 14(3). I'll explain.

As previously set out, in their witness statement Mr and Mrs M have said:

"We were shown online reviews praising [the Supplier], told that it was a great investment and offered free drinks. However, we were not interested in this agreement."

I again acknowledge that they have used the word 'investment' here, but there is no suggestion in their recollections that the Supplier led them to believe that the membership would or could make them a financial gain i.e. a profit, nor is there any indication they were induced into the purchase on that basis, particularly since (as outlined above), they've said they were not interested in purchasing after being told it was an investment.

Further, the emphasis of the rest of Mr and Mrs M's testimony is the Supplier's focus at the Time of Sale on the holidays the membership offered, and how they say that has not lived up to their expectations which it seems is what led to their complaint.

Mr and Mrs M also say several times throughout their testimony that they told the Supplier they did not want to purchase. Then, they decided they would agree to it in order to end the

sales process but intended to cancel during the 14-day cooling off period which again, they've said they "*simply forgot*" to do.

As outlined above, as part of their response the PR has provided a copy of two questionnaires Mr and Mrs M completed, seemingly as part of the PR's case preparation in September 2019.

In my view, these questionnaires are leading, in the sense that they ask pre-set, largely tick-box questions, in contrast to Mr and Mrs M's witness statement which is their own explanation of their recollections.

But in any event, I can see that in the first questionnaire (labelled 'S75 client questionnaire'), it asks the following question with the following answer from Mr and Mrs M:

"Q: What were the main reasons for you to enter into a contract with the timeshare owner?"

A: to have guaranteed holiday with sea view and ownership of our property that was shown during presentation, which wasn't what our property looked like."

And:

"Q: Please explain your experience of the product you purchased from the timeshare owner."

A: Didn't match promises we were shown in the showrooms, was far from the sea, service, didn't justified [sic] the cost we were not inform [sic] about maintenance fees. We were also taken on another sales presentation which we not [sic] told about."

I acknowledge that here, Mr and Mrs M appear to have referred to the Allocated Property, but there is nothing to suggest that their decision to purchase was motivated by the prospect of a financial gain i.e. a profit. And further, their unhappiness with the membership again appears to relate to how it functioned as a holiday product. And I therefore think this aligns with what I've already explained about Mr and Mrs M's witness statement, as outlined in my provisional decision and again above.

So again, on my reading of the evidence before me, the prospect of a financial gain from Fractional Club membership was not an important and motivating factor when Mr and Mrs M decided to go ahead with their purchase. That doesn't mean they weren't interested in a share in the Allocated Property. After all, that wouldn't be surprising given the nature of the product at the centre of this complaint. But as Mr and Mrs M themselves don't persuade me that their purchase was motivated by their share in the Allocated Property and the possibility of a profit, I still don't think a breach of Regulation 14(3) by the Supplier was likely to have been material to the decision Mr and Mrs M ultimately made.

On balance, therefore, for the reasons I've set out above, I don't think the credit relationship between Mr and Mrs M 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

As I've already said, I set out my thoughts in relation to the implications of the Supreme Court's judgment in *Hopcraft, Johnson and Wrench* for this complaint on 19 November 2025. I remain satisfied that the Lender has provided me with sufficient information to reach a conclusion about its commercial (including commission) arrangements with the Supplier. I've seen nothing in this case that leads me to think that the information in question is inaccurate. And while I recognise that the PR might disagree with the thoughts I shared on 19 November

2025, it hasn't offered any evidence and/or arguments that lead me to think that (1) the factors referenced by the Supreme Court have a bearing on the outcome of this complaint given its circumstances or (2) there are any other reasons why the commercial (including commission) arrangements between the Supplier and the Lender rendered the credit relationship between the latter and Mr and Mrs M under the Credit Agreement and related Purchase Agreement unfair for the purposes of Section 140A.

In response to my provisional decision, the PR also argues that the Supplier breached Regulation 12 of the Timeshare Regulations (which is concerned with the provision of key information) because it failed to provide Mr and Mrs M with information on the market value of the Allocated Property, title deeds and a proper legal description beyond a basic unit number.

However, it isn't clear what the PR means by "proper legal description" and has provided no authority for the suggestion the Supplier had to provide Mr and Mrs M with information on the title deeds of the Allocated Property. What's more, when it comes to the market value of the Allocated Property, I would draw the PR's attention to what Mrs Justice Collins Rice said in paragraphs 106 and 110 of her judgment in *Shawbrook & BPF v FOS*:

"Both ombudsmen rely on the reference in Sch.1 to 'exact nature and content of the rights' as being the basis for perceiving a legal obligation to provide 'value' information. But first, having regard to the high level of specificity in the Schedule, it is obvious that 'value' information is nowhere specified as such. And second, 'exact nature and content of the rights' is clearly intended, in context, to be a fair and objective identification and description of those rights. 'Value' information may possibly be context for, or commentary on, those rights, but the 'exact nature and content of rights' is something different from information which may (or may not) be relevant to how much they might be worth, now or in the future."

"I do not, and do not need to, go so far as to infer from the Regulations a legal prohibition on the provision of valuation information. My conclusion is that there is no legal obligation, derivable from Reg.12 of the Timeshare Regulations, to provide it, and that the ombudsmen's solution is, in its own terms, distinctly problematic for the regulatory framework. It remains my view that the principal legal consumer-protection control over buying and selling fractional ownership timeshares is the Reg.14(3) prohibition. That provision alone makes it hard enough to market a timeshare product containing a bare interest in the proceeds of the deferred sale of real property lawfully, without inviting the fleshing out of the law as positively demanding investor-protection information obligations at the same time."

(My emphasis added)

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

So, even if it could be said that the Supplier failed to give Mr and Mrs M sufficient information, in good time, in order to satisfy the requirements of Regulation 12 of the Timeshare Regulations for some of the reasons the PR gives, neither they nor the PR have persuaded me that they were deprived of information that would have led them to make a different purchasing decision at the Time of Sale when I've already found that the prospect of a financial gain from the Allocated Property was not an important and motivating factor behind their purchase. And with that being the case, even if there were information failings

(which I make no formal finding on), I can't see why that could be said to have rendered the credit relationship in question unfair to them.

Conclusion

Having adopted my provisional findings, and reconsidered the facts and circumstances of this complaint, I still don't think the Lender acted unfairly or unreasonably when it dealt with Mr and Mrs M's section 75 claim. I'm still not persuaded that the Lender was party to a credit relationship with Mr and Mrs M 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 for me to direct the Lender to compensate Mr and Mrs M.

My final decision

For the reasons set out above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M and Mrs M to accept or reject my decision before 30 April 2026.

Fiona Mallinson
Ombudsman