DRN-5706667

The complaint

Mrs B'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 her 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.

The loan in question was taken out in Mrs B's name only and as such, she is the only eligible complainant here. But, since the timeshare purchased with the loan was in the joint names of Mrs B and Mr B, I'll refer to them both throughout where appropriate.

What happened

Mrs and Mr B purchased membership of a timeshare (the 'Signature membership') from a timeshare provider (the 'Supplier') on 16 March 2016 (the 'Time of Sale'). They entered into an agreement with the Supplier to buy 1,800 Signature points at a cost of £14,287 (the 'Purchase Agreement').

Signature membership was asset backed – which meant it gave Mrs and Mr 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. It also had other benefits, namely more luxurious accommodation than was available through other memberships, and a right to stay in the Allocated Property while on holiday, with guaranteed availability for this on a certain week.

Mrs and Mr B paid for their Signature membership by paying a £500 deposit and taking finance for the remaining amount of £13,787 from the Lender in Mrs B's name only (the 'Credit Agreement').

Mrs B – using a professional representative (the 'PR') – wrote to the Lender on 26 January 2022 (the 'Letter of Complaint') to complain about:

1. Misrepresentations by the Supplier at the Time of Sale giving her a claim against the Lender under Section 75 of the CCA, which the Lender failed to accept and pay.
2. A breach of contract by the Supplier giving her a claim against the Lender under Section 75 of the CCA, which the Lender failed to accept and pay.
3. The Lender being party to an unfair credit relationship under the Credit Agreement and related Purchase Agreement for the purposes of Section 140A of the CCA.
4. The Credit Agreement being unenforceable because it was not arranged by a credit broker regulated by the Financial Conduct Authority (the 'FCA') to carry out such an activity.

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

Mrs B says that the Supplier made a number of pre-contractual misrepresentations at the Time of Sale – namely that the Supplier:

1. told them that Signature membership was an “investment” that would considerably increase in value when that was not true.
2. told them that they would have access to the holiday apartment at any time all year round when that was not true.

Mrs B says that she has 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, she has a like claim against the Lender, who, with the Supplier, is jointly and severally liable to Mrs B.

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

The PR says that the Supplier went into liquidation in December 2020 and this means Mrs and Mr B won’t be able to recover any amounts expected to be awarded by the Spanish courts.

As a result of the above, Mrs B suggests that she has a breach of contract claim against the Supplier, and therefore, under Section 75 of the CCA, she has a like claim against the Lender, who, with the Supplier, is jointly and severally liable to Mrs B.

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

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

1. Signature membership was marketed and sold to them as an investment in breach of regulation 14(3) of the Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010 (the ‘Timeshare Regulations’).
2. The contractual terms setting out that the membership and any money paid towards it would be forfeit in the event that Mrs and Mr B failed to make a payment due under the agreement were unfair contract terms under the Consumer Rights Act 2015 (the ‘CRA’).
3. The decision to lend was irresponsible because the Lender didn’t carry out the right creditworthiness assessment.

The Lender dealt with Mrs B’s concerns as a complaint and issued its final response letter on 29 July 2022, rejecting it on every ground.

The PR, on Mrs B’s behalf, 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.

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

I considered the matter and issued a provisional decision (the ‘PD’) dated 7 July 2025. In that decision, I said:
“***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 Mrs B 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 Mrs and Mr B were told that membership was an investment when that was not true. But, for reasons I'll go onto explain, the Signature membership plainly did have an investment element to it.

As for the rest of the Supplier's alleged pre-contractual misrepresentations, while I recognise that Mrs and Mr B have concerns about the way in which their Signature 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 allegations, little to no evidence has been provided to support them such as what exactly they were told, by whom and in what context, to add colour and context to them.

Some of the misrepresentations also seem inherently unlikely to have been made. For example, I don't think it's likely Mrs B and Mr B would have been told they could access the Allocated Property at any time all year round as that simply wasn't how membership worked – it gave them guaranteed access to the Allocated Property, but only for a specific week each year.

What's more, as there's nothing else on file that persuades me there were any false statements of existing fact made to Mrs and Mr B 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 Mrs B any compensation for the alleged misrepresentations of the Supplier. And with that being the case, I do not think the Lender acted unfairly or unreasonably when it dealt with the Section 75 claim in question.

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

I've already summarised how Section 75 of the CCA works and why it gives Mrs B a right of recourse against the Lender. So, it isn't necessary to repeat that here.

The PR suggests that the Supplier breached the Purchase Agreement because it went into liquidation in December 2020. And, in their view, this means Mrs and Mr B can't recover any amounts that are expected to be awarded by the Spanish courts. But, the PR's argument is difficult to square with the claim that seems to be made here under Section 75. After all, suing the Supplier in a Spanish court follows from, and is separate to, the rights and obligations that the parties to a contract might have.

What's more, in light of the Supplier's apparent liquidation, neither Mrs and Mr B nor the PR have said, suggested or provided evidence to demonstrate that they are no longer:

1. *Signature members;*
2. *able to use their Signature membership to holiday in the same way they could initially; and*
3. *entitled to a share in the net sales proceeds of the Allocated Property when their Signature membership ends.*

Overall, therefore, from the evidence I have seen to date, I do not think the Lender is liable to pay 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 Mrs B and Mr 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. But Mrs B also says that the credit relationship between her and the Lender was unfair under Section 140A of the CCA, when looking at all the circumstances of the case, including parts of the Supplier's sales process at the Time of Sale that she has concerns about. It is those concerns that I explore here.

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

I have then considered the impact of these on the fairness of the credit relationship between Mrs B and the Lender.

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

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

The PR also says that the contractual terms allowing the Supplier to terminate membership where Mrs and Mr B failed to make a payment due under the agreement 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 Plevin[1] 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, in order to conclude that a term in the Purchase Agreement rendered the credit relationship between Mrs B and the Lender unfair to her, I'd have to see that the term was unfair under the CRA, and that the term was actually operated against Mrs and Mr B in practice.

In other words, it's important to consider what real-world consequences, in terms of harm or prejudice to Mrs and Mr B, 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 Mrs B have led to any unfairness in the credit relationship between her and the Lender for the purposes of Section 140A of the CCA. And I say this because I cannot see that the relevant terms in the Purchase Agreement have actually been operated against Mrs and Mr B, let alone unfairly. So, I can't see that this caused an unfairness in the credit relationship which requires a remedy.

I'm not persuaded, therefore, that Mrs B's credit relationship with the Lender was rendered unfair to her under Section 140A for any of the reasons above. But there is another reason, perhaps the main reason, why she says her credit relationship with the Lender was unfair to her. And that's the suggestion that Signature membership was marketed and sold to her as an investment in breach of prohibition against selling timeshares in that way.

Was Signature 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 Mrs and Mr B's Signature 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 Signature membership 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.

Mrs and Mr B's share in the Allocated Property clearly, in my view, constituted an investment

[1] See Appendix.

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 Signature membership included an investment element did not, itself, transgress the prohibition in Regulation 14(3). That provision prohibits the marketing and selling of a timeshare contract as an investment. It doesn't prohibit the mere existence of an investment element in a timeshare contract or prohibit the marketing and selling of such a timeshare contract per se.

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

To conclude, therefore, that Signature membership was marketed or sold to Mrs and Mr 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 Signature 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 Signature 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 Signature membership as an 'investment' or quantifying to prospective purchasers, such as Mrs and Mr B, 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 Signature membership was not sold to Mrs and Mr B as an investment. So, it's possible that Signature membership wasn't marketed or sold to them as an investment in breach of Regulation 14(3).

On the other hand, I've also considered the testimony provided in this case by Mrs and Mr B.

The PR didn't provide any testimony or supporting evidence in relation to this allegation when the complaint was first referred to our Service. I acknowledge they alleged in the Letter of Complaint that the membership was sold to Mrs and Mr B as an investment at the Time of Sale. But, ultimately, a Letter of Complaint is not evidence.

In February 2024, in response to the Investigator's view, the PR provided some testimony from Mr B which appears to have been attached to an email dated 21 February 2024. Insofar as it relates to this Time of Sale, Mr B said:

> *"At our 2nd sales event they were seeking us to upgrade to a Higher [sic] spec property (signature suites) and again the basis We [sic] believe was that these were higher value properties And [sic] would provide a better return on out [sic] investment when We [sic] chose to sell"*

But, I'm mindful that this testimony was only provided in early 2024, following the Investigator's view and the judgment in Shawbrook & BPF v FOS[2]. So, there is a risk that Mr B's testimony here has been influenced by one or both of those. The testimony is also very brief, with little detail as to what exactly they were told, by whom and in what context so it doesn't particularly assist me in my decision making process.

For all of these reasons, I don't think that I can put much, if any, weight on the testimony that's been provided.

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[2] See Appendix.

But, I acknowledge what Mr B has had to say here. And, I acknowledge that the Supplier's training material left open the possibility that the sales representative may have positioned Signature membership as an investment. So, I accept that it's equally possible that Signature membership was marketed and sold to Mrs and Mr B 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 Mrs B rendered unfair to her?

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 Mrs B and the Lender that was unfair to her and warranted relief as a result, whether the Supplier's breach of Regulation 14(3) led her (and Mr B) to enter into the Purchase Agreement and the Credit Agreement is an important consideration.

I acknowledge that in Mr B's testimony, he suggests that the Supplier sold the membership to him and Mrs B as an investment at the Time of Sale. But this only represents what they were potentially told at the Time of Sale, it doesn't particularly give any insight into what their motivations were for making the purchase. And again, for the reasons given above, I'm unable to place much, if any, weight on the testimony that's been provided here.

So, having considered everything, there simply isn't sufficient evidence that the Supplier led them to believe that the Signature membership was an investment from which they would make a financial gain nor that they were induced into the purchase on that basis.

On balance, therefore, even if the Supplier had marketed or sold Signature membership as an investment in breach of Regulation 14(3) of the Timeshare Regulations, I am not persuaded that Mrs and Mr B's decision to purchase Signature membership at the Time of Sale was motivated by the prospect of a financial gain (i.e., a profit). And for that reason, I do not think the credit relationship between Mrs B and the Lender was unfair to her even if the Supplier had breached Regulation 14(3).

Section 140A: Conclusion

In conclusion, therefore, given all of the facts and circumstances of this complaint, I don't think the credit relationship between the Lender and Mrs B was unfair to her for the purposes of Section 140A. And taking everything into account, I think it's fair and reasonable to reject this aspect of the complaint on that basis.

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

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

At the Time of Sale, the regulation of consumer credit was performed by the FCA, and I have seen that the broker named on the Credit Agreement did have the requisite authorisation.

But, the actual complaint made by the PR here is that the sales staff were not employees of the Supplier. The Lender has however confirmed that the relevant sales representative here was employed by the Supplier and had undertaken training in brokering sales. I have no reason to doubt this, so I'm not persuaded that the Credit Agreement was arranged by an unauthorised credit broker."

In conclusion, given the facts and circumstances of this complaint, I did not think that the Lender acted unfairly or unreasonably when it dealt with Mrs B's Section 75 claims, and I was not persuaded that the Lender was party to a credit relationship with her under the Credit Agreement that was unfair to her for the purposes of Section 140A of the CCA. And having taken everything into account, I could see no other reason why it would be fair or reasonable to direct the Lender to compensate her.

The Lender responded to the PD and accepted it. The PR also responded – they did not accept the PD and provided some further comments and evidence they wished to be considered.

Having received the relevant responses from both parties, I'm now finalising 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.

As I did in my PD, I've set out the legal and regulatory context that I think is relevant to this complaint in an appendix (the 'Appendix') at the end of my findings – which forms part of this 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.

Following the responses from both parties, I've considered the case afresh and having done so, I've reached the same decision as that which I outlined in my provisional findings, for broadly the same reasons.

Again, my role as an Ombudsman isn't to address every single point which has been made to date, but to decide what is fair and reasonable in the circumstances of this complaint. If I haven't commented on, or referred to, something that either party has said, this doesn't mean I haven't considered it.

Rather, I've focused here on addressing what I consider to be the key issues in deciding this complaint and explaining the reasons for reaching my final decision.

The PR's further comments in response to the PD only relate to the issue of whether membership was sold to Mrs B as an investment at the Time of Sale and in turn, whether that caused the credit relationship between her and the Lender to be unfair.

As outlined in my PD, the PR originally raised various other points of complaint, all of which I addressed. But they didn't make any further comments in relation to those in their response to my PD. Indeed, they haven't said they disagree with any of my provisional conclusions in relation to those other points. Since I haven't been provided with anything more in relation to those other points by either party, it follows that my conclusions in relation to them remain the same as set out in my provisional decision. I'll now address the PR's points that they raised in response to the PD.

Firstly, I will address what the PR says about my assessment of Mr B's testimony.

The PR explained in their response that they hadn't shared the Investigator's view on this complaint with Mr and Mrs B, saying "*this was done in order not to influence their recollections*".

The PR also said Mr and Mrs B have confirmed in an additional witness statement that they haven't heard about the judgment handed down in *Shawbrook and BPF v FOS*[3]. They provided a copy of this additional testimony, which is in the form of an email from Mr B to the PR dated 18 July 2025. This was provided in response to the PR asking Mr and Mrs B certain questions.

The PR said this means Mr and Mrs B's recollections have not been influenced by either the Investigator's view or the aforementioned judgment.

Part of my assessment of the testimony was to consider *when* it was written, and whether it may have been, even subconsciously, affected by external factors such as other similar complaints.

I appreciate that the PR says Mr and Mrs B haven't heard about the judgment and I have no reason to doubt that. But I find it hard to accept that Mrs (and Mr) B would be in a position to decide whether or not to accept the Investigator's outcome (or indeed my provisional decision), without actually seeing what this said.

So, I maintain there is a risk that Mr B's testimony was tainted, even subconsciously, by the Investigator's view and/or the outcome in *Shawbrook & BPF v FOS*. And, for these reasons along with those I already explained in my PD, I don't think I can put much, if any, weight on the testimony provided.

Turning to the PR's other remaining comments, I also remain unpersuaded that any breach of Regulation 14(3) was material to Mr and Mrs B's purchasing decision.

As noted above, in response to the PD, the PR provided some additional comments from Mr B in response to certain questions the PR had asked of him and Mrs B. And one of those questions related to what the benefits of the Signature membership were and what convinced them to purchase, to which Mr B has said:

> "*The upselling process to convince us to move to a signature suite ownership was long and high pressured but for us ultimately rested on 3 key issues. A much higher standard of finish in these apartments, everything from kitchen and bathroom fittings, luxury loungers on the balcony, sea views and hot tubs. We were shown around a show apartment in Tenerife and this difference in quality was emphasised on many occasions.*
>
> *We were also told there would be a limited number of these available and a quick decision was important. We were told the limited supply would enhance their desirability and hence future value.*

[3] See Appendix.

> *Finally it was suggested frequently throughout the sales process that these signature apartments would have a much higher sale value at the end of the contract and hence provide a much higher return on our additional investment, which we both saw as a positive legacy for our children.*"

I acknowledge what Mr B has had to say here but again, I also have to consider when this testimony was provided i.e. following the Investigator's view, the outcome in *Shawbrook & BPF v FOS*, and my PD. And also, how it was provided i.e. in response to a specific question from the PR. It's also difficult to explain why some of these details were not included in Mr B's original testimony.

So, for these and the same reasons as I've outlined above, I don't consider I can place much, if any, weight on the testimony which has now been provided. Further, some of what Mr B has now said suggests the luxury aspect of Signature membership in particular was also 'key' to their purchasing decision, suggesting that they would have pressed ahead with their purchase regardless of any breach of Regulation 14(3) by the Supplier at the Time of Sale.

Aside from this, the PR has only provided some comments about how the product worked and made reference to various parts of the judgment in *Shawbrook and BPF v FOS*, but it's unclear exactly what point they're making here. They appear to be suggesting that products like the Signature membership that Mr and Mrs B purchased in this case were always sold in breach of Regulation 14(3) simply due to the nature of them. But as I explained in my PD, the Signature membership clearly did have an investment element to it – this is not in dispute. And, the Timeshare Regulations did not ban products such as the Signature membership. They just regulated how such products were marketed and sold. Further, the judgment referred to did not make a blanket finding that all such products were mis-sold in the way the PR appears to be suggesting. Ultimately, I think here the PR is potentially conflating the issue of whether the Supplier breached Regulation 14(3) at the Time of Sale with whether any such breach was material to Mr and Mrs B's purchasing decision.

So overall, as I said before, even if the Supplier had marketed or sold the membership as an investment in breach of Regulation 14(3) (which I still make no finding on here), for all of the above reasons and those given in my PD, I'm not persuaded Mr and Mrs B's decision to make the purchase was motivated by the prospect of a financial gain. So, I still don't think the credit relationship between Mrs B and the Lender was unfair to her for this reason.

Conclusion

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

Appendix: The Legal and Regulatory Context

The Consumer Credit Act 1974 (as amended by the Consumer Credit Act 2006) (the 'CCA')

The timeshare(s) at the centre of the complaint in question was/were paid for using restricted-use credit that was regulated by the Consumer Credit Act 1974. As a result, the purchase(s) was/were covered by certain protections afforded to consumers by the CCA provided the necessary conditions were and are met. The most relevant sections as at the relevant time(s) are below.

Section 56: Antecedent Negotiations
Section 75: Liability of Creditor for Breaches by a Supplier
Sections 140A: Unfair Relationships Between Creditors and Debtors
Section 140B: Powers of Court in Relation to Unfair Relationships
Section 140C: Interpretation of Sections 140A and 140B

Case Law on Section 140A

Of particular relevance to the complaint in question are:

1. The Supreme Court's judgment in *Plevin v Paragon Personal Finance Ltd* [2014] UKSC 61 ('*Plevin*') remains the leading case.
2. The judgment of the Court of Appeal in the case of *Scotland v British Credit Trust [2014] EWCA Civ 790 ('Scotland and Reast')* sets out a helpful interpretation of the deemed agency and unfair relationship provisions of the CCA.
3. *Patel v Patel* [2009] EWHC 3264 (QB) ('*Patel*') – in which the High Court held 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 relationship or otherwise the date the relationship ended.
4. The Supreme Court's judgment in *Smith v Royal Bank of Scotland Plc* [2023] UKSC 34 ('*Smith*') – which approved the High Court's judgment in *Patel*.
5. *Deutsche Bank (Suisse) SA v Khan and others* [2013] EWHC 482 (Comm) – in Hamblen J summarised – at paragraph 346 – some of the general principles that apply to the application of the unfair relationship test.
6. *Carney v NM Rothschild & Sons Ltd* [2018] EWHC 958 ('*Carney*').
7. *Kerrigan v Elevate Credit International Ltd* [2020] EWHC 2169 (Comm) ('*Kerrigan*').
8. *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*').

My Understanding of the Law on the Unfair Relationship Provisions

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."*

So, the negotiations conducted by the Supplier during the sale of the timeshare(s) in question was/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."[4]

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

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

into. The High Court held in *Patel* (which was recently approved by the Supreme Court in the case of *Smith),* that determining whether or not the relationship complained of was unfair had to be made *"having regard to the entirety of the relationship and all potentially relevant matters up to the time of making the determination"* – which was the date of the trial in the case of an existing credit relationship or otherwise the date the credit relationship ended.

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

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

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

The Law on Misrepresentation

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. It isn't practical to cover the law on misrepresentation in full in this decision – nor is it necessary. But, summarising the relevant pages in *Chitty on Contracts (33rd Edition)*, 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.

The misrepresentation doesn't need to be the only matter that induced the representee to enter into the contract. But the representee must have been materially influenced by the misrepresentation and (unless the misrepresentation was fraudulent or was known to be likely to influence the person to whom it was made) the misrepresentation must be such that it would affect the judgement of a reasonable person when deciding whether to enter into the contract and on what terms.

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.

Silence, subject to some exceptions, doesn't usually amount to a misrepresentation on its own as there is generally no duty to disclose facts which, if known, would affect a party's decision to enter a contract. And the courts aren't too ready to find an implied representation given the challenges acknowledged throughout case law.

The Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010 (the 'Timeshare Regulations')

The relevant rules and regulations that the Supplier in this complaint had to follow were set out in the Timeshare Regulations. I'm not deciding – nor is it my role to decide – whether the Supplier (which isn't a respondent to this complaint) is liable for any breaches of these Regulations. But they are relevant to this complaint insofar as they inform and influence the extent to which the relationship in question was unfair. After all, they signal the standard of

commercial conduct reasonably expected of the Supplier when acting as the creditor's agent in marketing and selling membership of the Owners Club.

The Regulations have been amended in places since the Time of Sale. So, I refer below to the most relevant regulations as they were at the time(s) in question:

- Regulation 12: Key Information
- Regulation 13: Completing the Standard Information Form
- Regulation 14: Marketing and Sales
- Regulation 15: Form of Contract
- Regulation 16: Obligations of Trader

The Timeshare Regulations were introduced to implement EC legislation, Directive 122/EC on the protection of consumers in respect of certain aspects of timeshare, long-term holiday products, resale and exchange contracts (the '2008 Timeshare Directive'), with the purpose of achieving 'a high level of consumer protection' (Article 1 of the 2008 Timeshare Directive). The EC had deemed the 2008 Timeshare Directive necessary because the nature of timeshare products and the commercial practices that had grown up around their sale made it appropriate to pass specific and detailed legislation, going further than the existing and more general unfair trading practices legislation.[5]

The Consumer Protection from Unfair Trading Regulations 2008 (the 'CPUT Regulations')

The CPUT Regulations put in place a regulatory framework to prevent business practices that were and are unfair to consumers. They have been amended in places since they were first introduced. And it's only since 1 October 2014 that they imposed civil liability for certain breaches – though not misleading omissions. But, again, I'm not deciding – nor is it my role to decide – whether the Supplier is liable for any breaches of these regulations. Instead, they are relevant to this complaint insofar as they inform and influence the extent to which the relationship in question was unfair as they also signal the standard of commercial conduct reasonably expected of the Supplier when acting as the creditor's agent in marketing and selling membership of the Owners Club.

Below are the most relevant regulations as they were at the relevant time(s):

- Regulation 3: Prohibition of Unfair Commercial Practices
- Regulation 5: Misleading Actions
- Regulation 6: Misleading Omissions
- Regulation 7: Aggressive Commercial Practices
- Schedule 1: Paragraphs 7 and 24

The Unfair Terms in Consumer Contracts Regulations 1999 (the 'UTCCR')

The UTCCR protected consumers against unfair standard terms in standard term contracts. They applied and apply to contracts entered into until and including 30 September 2015 when they were replaced by the Consumer Rights Act 2015.

Below are the most relevant regulations as they were at the relevant time(s):

[5] See Recital 9 in the Preamble to the 2008 Timeshare Directive.

- Regulation 5: Unfair Terms
- Regulation 6: Assessment of Unfair Terms
- Regulation 7: Written Contracts
- Schedule 2: Indicative and Non-Exhaustive List of Possible Unfair Terms

The Consumer Rights Act 2015 (the 'CRA')

The CRA, amongst other things, protects consumers against unfair terms in contracts. It applies to contracts entered into on or after 1 October 2015 – replacing the Unfair Terms in Consumer Contracts Regulations 1999.

Part 2 of the CRA is the most relevant section as at the relevant time(s).

Relevant Publications

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 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 Mrs B to accept or reject my decision before 2 September 2025.

Fiona Mallinson
Ombudsman