

The complaint

Mr A and Mrs F'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 A and Mrs F purchased membership of a timeshare (the 'Signature Collection') from a timeshare provider (the 'Supplier') on 14 August 2017 (the 'Time of Sale'). They entered into an agreement with the Supplier to buy 1420 fractional points at a cost of £22,450 (the 'Purchase Agreement'). But after trading in their existing membership, they ended up paying £11,830 for membership of the Signature Collection.

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

Mr A and Mrs F paid for their Signature Collection membership by taking finance of £22,850 from the Lender in both of their names (the 'Credit Agreement'). They paid a deposit of £500 separate to this and a further £12,231 was used by the supplier to repay another loan taken to finance a previous timeshare purchase.

Mr A and Mrs F – using a professional representative (the 'PR') – wrote to the Lender on 21 January 2022 (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
4. The decision to lend being irresponsible because the Lender did not carry out the right creditworthiness assessment.
5. 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

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

- Told them that they had purchased an investment and that their timeshare would considerably appreciate in value.

- Told them that they would have a share of a property and its value would considerably increase, therefore they were promised a considerable return on investment.
- Told them they could sell the timeshare back to the resort or easily sell it at a profit.
- Told them they would have access to the holiday's apartment at a time all around the year.

Mr A and Mrs F said that they had 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 had a like claim against the Lender, who, with the Supplier, was jointly and severally liable to Mr A and Mrs F.

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

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

- The Lender was/is party to an unfair credit relationship under the Credit Agreement and related Purchase Agreement for the purposes of Section 140A of the CCA because Signature Collection 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').
- the contractual terms setting out the consequences of failing to make a payment due under the agreement within 14 days of being given written notice to pay it were unfair contract terms under the Consumer Rights Act 2015 ('CRA').

The Lender dealt with Mr A and Mrs F's concerns as a complaint and issued its final response letter on 14 February 2022, rejecting it on every ground.

I issued a provisional decision explaining why I didn't plan to uphold Mr A and Mrs F's complaint. I said:

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

And having done that, I do not currently think this complaint should be upheld.

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

What is more, I have made my decision on the balance of probabilities – which means I have based it on what I think is more likely than not to have happened given the available evidence and the wider circumstances.

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

The CCA introduced a regime of connected lender liability under section 75 that affords consumers ("debtors") a right of recourse against lenders that provide the finance for the acquisition of goods or services from third-party merchants ("suppliers") in the event that

there is an actionable misrepresentation and/or breach of contract by the supplier.

In short, a claim against the Lender under Section 75 essentially mirrors the claim Mr A and Mrs F could make against the Supplier.

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

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 Signature Collection membership had been misrepresented by the Supplier because Mr A and Mrs F were told that they were buying an interest in a specific piece of "real property" when that was not true. However, telling prospective members that they were buying a fraction or share of one of the Supplier's properties was not untrue. Mr A and Mrs F's share in the Allocated Property was clearly the purchase of a share of the net sale proceeds of a specific property in a specific resort. And while the PR might question the exact legal mechanism used to give them that interest, it did not change the fact that they acquired such an interest.

As for the rest of the Supplier's alleged pre-contractual misrepresentations, while I recognise that Mr A and Mrs F's concerns about the way in which their Signature Collection 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.

Mr A and Mrs F say that they were told they would have access to the Allocated Property 'any time all around the year'. However, this doesn't appear to be reflected in any of the paperwork from the Time of Sale, including documents signed by Mr A and Mrs F. For example The Purchase Agreement sets out they could exercise a preferential right to take holidays at the Allocated Property in week 20 of the year. A 'pricing sheet' (provided by Mr A and Mrs F) was also prepared setting out things like the number of bedrooms, low mid, high or peak season, the unit number, the week number and various other costs. This was completed by hand and seems to reflect some of the discussions that were had at the Time of Sale. Again, it refers to week 20 which I think suggests Mr A and Mrs F would have been told they had preferential rights to occupy the property in that week rather than all year. If that were not the case, Mr A and Mrs F have not explained what the representative said or did to make them think the paperwork was a not an accurate reflection of the discussions they had in respect of the use of the Allocated Property.

As to the allegation Mr A and Mrs F were led to believe they could sell the timeshare back to the resort or easily sell it a profit, no further detail has been provided beyond that bare allegation such as what exactly was said by the Supplier to make them think that. I think this is important in respect of this allegation as the members declaration document that Mr A and Mrs F signed to confirm their understanding, said that the Supplier would "not repurchase fractional rights".

What's more, as there's nothing else on file that persuades there were any false statements of existing fact made to Mr A and Mrs F 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 A and Mrs F 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 A and Mrs F was misrepresented (or breached) by the Supplier in a way that makes for a successful claim under Section 75 of the CCA and outcome in this complaint. But Mr A and Mrs F also say that the credit relationship between them and the Lender was unfair under Section 140A of the CCA, when looking at all the circumstances of the case, including parts of the Supplier's sales process at the Time of Sale that they have concerns about. It is those concerns that I explore here.

As Section 140A of the CCA is relevant law, I do have to consider it. So, in determining what is fair and reasonable in all the circumstances of the case, I will consider whether the credit relationship between Mr A and Mrs F and the Lender was unfair.

Under Section 140A of the CCA, a debtor-creditor relationship can be found to have been or be unfair to the debtor because of one or more of the following: the terms of the credit agreement itself; how the creditor exercised or enforced its rights under the agreement; and any other thing done (or not done) by, or on behalf of, the creditor (either before or after the making of the agreement or any related agreement) (s.140A(1) CCA). Such a finding may also be based on the terms of any related agreement (which here, includes the Purchase Agreement) and, when combined with Section 56 of the CCA, on anything done or not done by the supplier on the creditor's behalf before the making of the credit agreement or any related agreement.

Section 56 plays an important role in the CCA because it defines the terms "antecedent negotiations" and "negotiator". As a result, it provides a foundation for a number of provisions that follow it. But it also creates a statutory agency in particular circumstances. And while Section 56(1) sets out three of them, the most relevant to this complaint are negotiations conducted by the supplier in relation to a transaction financed or proposed to be financed by a debtor-creditor-supplier agreement.

A debtor-creditor-supplier agreement is defined by Section 12(b) of the CCA as "a restricted-use credit agreement which falls within section 11(1)(b) and is made by the creditor under pre-existing arrangements, or in contemplation of future arrangements, between himself and the supplier [...]". And Section 11(1)(b) of the CCA says that a restricted-use credit agreement is a regulated credit agreement used to "finance a transaction between the debtor and a person (the 'supplier') other than the creditor [...]" and "restricted-use credit" shall be construed accordingly."

The Lender doesn't dispute that there was a pre-existing arrangement between it and the Supplier. So, the negotiations conducted by the Supplier during the sale of Mr A and Mrs F's membership of the Signature Collection were conducted in relation to a transaction financed or proposed to be financed by a debtor-creditor-supplier agreement as defined by Section 12(b). That made them antecedent negotiations under Section 56(1)(c) – which, in turn, meant that they were conducted by the Supplier as an agent for the Lender as per Section 56(2). And such antecedent negotiations were "any other thing done (or not done) by, or on behalf of, the creditor" under s.140(1)(c) CCA.

Antecedent negotiations under Section 56 cover both the acts and omissions of the Supplier, as Lord Sumption made clear in Plevin, at paragraph 31:

"[Section] 56 provides that [when] antecedent negotiations for a debtor-creditor-supplier agreement are conducted by a credit-broker or the supplier, the negotiations are "deemed to

be conducted by the negotiator in the capacity of agent of the creditor as well as in 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."

So, the Supplier is deemed to be Lender's statutory agent for the purpose of the pre-contractual negotiations.

However, an assessment of unfairness under Section 140A isn't limited to what happened immediately before or at the time a credit agreement and related agreement were entered into. The High Court held in Patel (which was recently approved by the Supreme Court in the case of Smith), that determining whether or not the relationship complained of was unfair had to be made "having regard to the entirety of the relationship and all potentially relevant matters up to the time of making the determination" – which was the date of the trial in the case of an existing credit relationship or otherwise the date the credit relationship ended. The breadth of the unfair relationship test under Section 140A, therefore, is stark. But it isn't a right afforded to a debtor simply because of a breach of a legal or equitable duty. As the Supreme Court said in Plevin (at paragraph 17):

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

Instead, it was said by the Supreme Court in Plevin that the protection afforded to debtors by Section 140A is the consequence of all of the relevant facts. I have considered the entirety of the credit relationship between Mr A and Mrs F 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 A and Mrs F and the Lender.

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

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

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

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

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

Regulation 14(3) of the Timeshare Regulations prohibited the Supplier from marketing or selling membership of the Signature Collection as an investment. This is what the provision said at the Time of Sale:

"A trader must not market or sell a proposed timeshare contract or long-term holiday product contract as an investment if the proposed contract would be a regulated contract."

But the PR says that the Supplier did exactly that at the Time of Sale. So, that is what I have considered next.

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

Mr A and Mrs F's share in the Allocated Property clearly, in my view, constituted an investment as it offered them the prospect of a financial return – whether or not, like all investments, that was more than what they first put into it. But the fact that Signature Collection membership included an investment element did not, itself, transgress the prohibition in Regulation 14(3). That provision prohibits the marketing and selling of a timeshare contract as an investment. It doesn't prohibit the mere existence of an investment element in a timeshare contract or prohibit the marketing and selling of such a timeshare contract per se.

In other words, the Timeshare Regulations did not ban products such as the Signature Collection. They just regulated how such products were marketed and sold. To conclude, therefore, that Signature Collection membership was marketed or sold to Mr A and Mrs F 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 Collection membership offered them the prospect of a financial gain (i.e., a profit) given the facts and circumstances of this complaint.

There is evidence in this complaint that the Supplier made efforts to avoid specifically describing membership of the Signature Collection as an 'investment' or quantifying to prospective purchasers, such as Mr A and Mrs F, the financial value of their share in the net sales proceeds of the Allocated Property along with the investment considerations, risks and rewards attached to them. There were, for instance, disclaimers in the contemporaneous paperwork that state that Signature Collection membership was not sold to Mr A and Mrs F as an investment.

With that said, I acknowledge that the Supplier's training material left open the possibility that the sales representative may have positioned Signature Collection membership as an investment. And, I accept that it's possible that Signature Collection membership was marketed and sold to them as an investment in breach of Regulation 14(3) given the difficulty the Supplier was likely to have had in presenting a share in the net sales proceeds of the Allocated Property as an important feature of Signature Collection membership without breaching the relevant prohibition.

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

Was the credit relationship between the Lender and Mr A and Mrs F rendered unfair?

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

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

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

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

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

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

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

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

I've thought carefully about everything Mr A and Mrs F have told us about the sale. However, I'm not persuaded there is any indication that they were induced into the purchase on the basis that Signature Collection membership was an investment from which they would make a financial gain. I'll explain why.

I accept that upon making their complaint to the Lender in February 2022 the PR said things such as:

“(they were) told that (they) had purchased an investment and that (their) timeshare would considerably appreciate in value.”

And,

“(they were) told that (they) would have a share of a property and its value would considerably increase, therefore (they were) promised a considerable return on investment”.

And,

“The misrepresentation was actionable, my client believed in it. relied on it and as a result was induced to enter into the contract, which otherwise would not have done and was materially influenced by the misrepresentation, because relying on this representation, decided to enter into the contract”

However, the PR also provided a personal statement from Mr A and Mrs F in January 2024 which it said was written before the Letter of Complaint. Given the PR said the personal statement came from Mr A and Mrs F, and given the Letter of Complaint doesn't appear to include any individual recollections from the sale, or be written in Mr A and Mrs F's own words, I think the personal statement is a better reflection of Mr A and Mrs F's recollections of the Time of Sale than the Letter of Complaint.

That is not to say that the Letter of Complaint could not possibly have reflected Mr A and Mrs F's experience at the Time of Sale. However, in this particular case I think the evidence, including the personal statement show that they did not place the importance on receiving a profit from the investment that the PR said they did in the Letter of Complaint.

In said personal statement Mr A and Mrs F (albeit rather briefly) describe some of their recollections of the sale in their own words. Their entire statement was as follows:

"I was sold the CLC package a while back. It wasn't the best of holiday packages.

I was told that with the monthly payment I will be making; In addition to having free holidays I would own a fraction of the property at the end of the period once the property is sold off.

Also the holiday dates were quite restrictive as we could only travel at certain times in the year. This never fell in school holiday times and with a young family it was less than ideal.

I felt like I was sold a lie."

I don't think the statement shows that the prospect of a profit or financial gain was material to Mr A and Mrs F's decision to make this particular purchase. I don't think Mr A and Mrs F's reference to having free holidays and owning a fraction in the allocated property at the end when it is sold off in return for the 'monthly payment' demonstrate a belief they would be making more money than they'd be putting in. Rather, I think it demonstrates a belief they would be getting holidays and a fraction for their money – which ultimately is just a distilled (and albeit slightly confused) description of the product they purchased. However, even if Mr A and Mrs F are somewhat confused in their recollection of the sale, and Signature Club membership was marketed as an investment, their statement does not demonstrate a clear reliance on this as the reason for their purchase. Mr A and Mrs F say they were sold a lie but there is not enough in their statement to explain what that "lie" might have been.

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

On balance, therefore, even if the Supplier had marketed or sold the Signature Collection membership as an investment in breach of Regulation 14(3) of the Timeshare Regulations, I am not persuaded that Mr A and Mrs F's decision to purchase Signature Collection membership at the Time of Sale was motivated by the prospect of a financial gain (i.e., a profit). On the contrary, I think the evidence suggests 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 A and Mrs F and the Lender was unfair to them even if the Supplier had breached Regulation 14(3).

*The PR has said that terms around the forfeiting of membership for non-payment of management fees were found to be unfair in *Link Financial Ltd v Wilson* [2014] EWHC 252 (Ch). In that case, a member of the Supplier's forfeited their membership when they failed to pay management fees. A judge found that the relevant terms were unfair and could lead to an unfair debtor-creditor relationship. But here, I've not seen that any terms were operated unfairly against Mr A and Mrs F nor that any potentially unfair contract terms, even if not applied unfairly in practice, caused them to act in a way that otherwise rendered the credit relationship in question unfair to them. So, although it's possible that terms in the Purchase Agreement had the potential to cause an unfairness, as that hasn't happened in practice, I fail to see how there could be an unfair debtor-creditor relationship arising out of them.*

Moreover, as I haven't seen anything else to suggest that there are any other reasons why the credit relationship between the Lender and Mr A and Mrs F was unfair to them because of an information failing by the Supplier, I'm not persuaded it was.

Section 140A: Conclusion

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

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

Mr A and Mrs F say that the Credit Agreement was arranged by an unauthorised credit broker, the upshot of which is to suggest that the Lender wasn't [and isn't] permitted to enforce the Credit Agreement as a result. However, having looked at the Financial Ombudsman Service's internal records and the FCA register, I can see that the Lender named on the Credit Agreement as the credit intermediary was at the Time of Sale, authorised by the FCA for credit broking. And in the absence of any evidence to suggest that its Licence did not cover credit broking, I am not persuaded that the Credit Agreement was arranged by an unauthorised credit broker.

The PR said that all of the Supplier's sales representatives are self-employed and so they are not authorised by the FCA for credit broking. However, no evidence has been provided in support of this. What would seem relevant to me is that the 'compliance officer' named on the Credit Agreement was representing the company named on it and that company did hold the required permissions.

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 Mr A and Mrs F's section 75 claim(s), and I am not persuaded that the Lender was party to a credit relationship with them under the Credit Agreement that was unfair to them for the purposes of Section 140A of the CCA. And having taken everything into account, I see no other reason why it would be fair or reasonable to direct the Lender to compensate them.

If there is any further information on this complaint that Mr A and Mrs F wishes to provide, I would invite them to do so in response to this provisional decision."

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

The PR said that although it hadn't shown my provisional decision to Mr A and Mrs F it had communicated the outcome and they did not agree. The complaint has therefore been returned to me for a final decision.

What I've decided – and why

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

I note the PR has focussed its response on the parts of my provisional decision headed

Was Signature Collection membership marketed and sold at the Time of Sale as an

investment in breach of regulation 14(3) of the Timeshare Regulations?

And,

Was the credit relationship between the Lender and Mr A and Mrs F rendered unfair?

I've therefore re-focussed similarly on these parts and on the PR's response to my provisional decision. As no other comments or evidence have been provided in response to the remainder of my provisional decision, my findings in respect of these parts remain as they were in the extract of my provisional decision above and for the same reasons.

The PR said that looking again at Mr A and Mrs F's testimony provided to this service in January 2024, *"it seems the fact the property would be sold at the end, and they would have their fraction sold, respectively they would receive the money from the sale, was quite important to them"*.

The PR said this means that the investment element did play an important part during the sales process in convincing Mr A and Mrs F to purchase and was a motivating factor in their decision making.

As I explained in my provisional decision, Mr A and Mrs F's testimony in this respect appears to be a simple description of how Signature Collection membership worked. Just because they have mentioned the property being sold at the end does not mean this was the reason for their purchase and I remain of the view that their testimony does not demonstrate the investment element of the membership was the reason for their purchase.

The remaining comments made by the PR relate to how membership was likely to have been sold to Mr A and Mrs F. I've already accepted in my provisional decision that it's possible that Signature Collection membership was marketed and sold to them as an investment in breach of Regulation 14(3). But again, the reason I haven't upheld Mr A and Mrs F's complaint in this respect is because it doesn't appear this was the reason they purchased Signature Collection membership and so their relationship with the lender was not unfair as a result. So, The PR's further comments on the way membership was likely to have been marketed do little to support any arguments relating to Mr A and Mrs F's motivation for the purchase.

Overall, the PR's comments in response to my provisional decision do not persuade me that any of my findings were unfair or unreasonable and I see no reason to depart from the conclusion I reached in my provisional decision or the reasons for doing so, both of which are explained in the extract from it above.

I still find therefore that the Lender did not act unfairly or unreasonably when it dealt with Mr A and Mrs F's section 75 claim(s), and I am not persuaded that the Lender was party to a credit relationship with them under the Credit Agreement that was unfair to them for the purposes of Section 140A of the CCA. And having taken everything into account, I see no other reason why it would be fair or reasonable to direct the Lender to compensate them.

My final decision

For the reasons I have explained, I do not uphold Mr A and Mrs F's complaint.

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

Michael Ball
Ombudsman