

The complaint

Mr and Mrs H's complaint is, in essence, that Shawbrook Bank Limited (the 'Lender') acted unfairly and unreasonably by (1) being party to an unfair credit relationship with them under Section 140A of the Consumer Credit Act 1974 (as amended) (the 'CCA') and (2) deciding against paying claims under Section 75 of the CCA.

What happened

Mr and Mrs H purchased membership of a timeshare (the Signature membership - SM') from a timeshare provider (the 'Supplier') on 7 August 2017 (the 'Time of Sale'). They entered into an agreement with the Supplier to buy 2350 fractional points at a cost of £15,333 (the 'Purchase Agreement'). Prior to this purchase they had an existing Fractional club timeshare.

SM was asset backed – which meant it gave Mr and Mrs H 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 H paid for their SM by taking finance of £15,333 from the Lender in Mr and Mrs H's names (the 'Credit Agreement').

Mr and Mrs H – using a professional representative (the 'PR') – wrote to the Lender on 1 February 2023 (the 'Letter of Complaint') to complain about:

1. Misrepresentations by the Supplier at the Time of Sale giving them a claim against the Lender under Section 75 of the CCA, which the Lender failed to accept and pay.
2. A breach of contract by the Supplier giving them a claim against the Lender under Section 75 of the CCA, which the Lender failed to accept and pay.
3. The Lender being party to an unfair credit relationship under the Credit Agreement and related Purchase Agreement for the purposes of Section 140A of the CCA.
4. The decision to lend being irresponsible because (1) the Lender did not carry out the right creditworthiness assessment and (2) the money lent to them under the Credit Agreement was unaffordable for them.

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

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

1. told them that SM had a guaranteed end date when that was not true.
2. told them that they were buying an interest in a specific piece of "real property" when that was not true.
3. told them that SM was an "investment" when that was not true.
4. told them that the Supplier's holiday resorts were exclusive to its members when that was not true.
5. It wasn't made clear that maintenance fees would increase significantly each year.

Mr and Mrs H 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 H.

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

Mr and Mrs H say that the Supplier breached the Purchase Agreement because there is no guaranteed exit date as to when they will receive their share of the net sale proceeds of the Allocated Property.

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

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

The Letter of Complaint set out several reasons why Mr and Mrs H 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. SM 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 (i) the duration of their SM and/or (ii) the obligation to pay annual management charges for the duration of their membership were unfair contract terms under The Consumer Rights Act 2015 ('CRA').¹
3. They were pressured into purchasing SM by the Supplier.
4. The Supplier's sales presentation at the Time of Sale included misleading actions and/or misleading omissions under the Consumer Protection from Unfair Trading Regulations 2008 (the 'CPUT Regulations') as well as a prohibited practice under Schedule 1 of those Regulations.
5. The Lender didn't carry out a proper affordability assessment.
6. The Supplier failed to provide sufficient information in relation to the amount of commission paid to it in respect of the finance provided.

The Lender didn't provide a substantive response to Mr and Mrs H's concerns, so they then referred the complaint to the Financial Ombudsman Service. It was assessed by an Investigator who, having considered the information on file, upheld the complaint on its merits.

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

¹ This is the relevant legislation for the Time of Sale.

The Lender 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 on 17 July 2025, explaining why I intended to uphold the complaint.

In response, the PR told me that Mr and Mrs H accepted my decision. The Lender told me that it did not intend to challenge my decision, given the specific facts and circumstances of the complaint. It said it would provide redress documentation for Mr and Mrs H to consider. It also shared a number of observations on points in the provisional decision that it didn't agree with, which it thought raised concerns with the approach I had taken. It asked that I consider those matters carefully in the assessment of future complaints.

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 set out in an appendix (the 'Appendix') below – which forms part of this decision.

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.”²

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

However, an assessment of unfairness under Section 140A isn’t limited to what happened immediately before or at the time a credit agreement and related agreement were entered into. The High Court held in *Patel* (which was recently approved by the Supreme Court in the 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

² The Court of Appeal’s decision in *Scotland* was recently followed in *Smith*.

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.³

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

³ See Recital 9 in the Preamble to the 2008 Timeshare Directive.

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):

- 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).

County Court Cases on the Sale of Timeshares

1. *Hitachi v Topping* (20 June 2018, County Court at Nottingham) – claim withdrawn following cross-examination of the claimant.
2. *Brown v Shawbrook Bank Limited* (18 June 2020, County Court at Wrexham)
3. *Wilson v Clydesdale Financial Services Limited* (19 July 2021, County Court at Portsmouth)
4. *Gallagher v Diamond Resorts (Europe) Limited* (9 February 2021, County Court at Preston)
5. *Prankard v Shawbrook Bank Limited* (8 October 2021, County Court at Cardiff)

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’).

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, and as the Lender has said it doesn’t intend to challenge my provisional decision, I remain of the opinion that this complaint should be upheld because the Supplier breached Regulation 14(3) of the Timeshare Regulations by marketing and/or selling SM to Mr and Mrs H as an investment, which, in the circumstances of this complaint, rendered the credit relationship between them and the Lender unfair to them for the purposes of Section 140A of the CCA. And for the avoidance of doubt, I have considered the observations made by the Lender in its response to the provisional decision.

However, before I explain my reasoning, 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, while I recognise that there are a number of aspects to Mr and Mrs H’s complaint, it isn’t necessary to make formal findings on all of them. This includes the allegations that:

1. They were told that SM had a guaranteed end date when that was not true.
2. They were told that they were buying an interest in a specific piece of “real property” when that was not true.
3. They were told that SM was an “investment” when that was not true.
4. They were told that the Supplier’s holiday resorts were exclusive to its members when that was not true.
5. That the Supplier breached the Purchase Agreement because there is no guarantee that they will receive their share of the net sale proceeds of the Allocated Property.

because, even if those aspects of the complaint ought to succeed, the redress I’m currently proposing puts Mr and Mrs H in the same or a better position than they would be if the redress was limited to misrepresentation/breach of contract.

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

Having considered the entirety of the credit relationship between Mr and Mrs H and the Lender along with all of the circumstances of the complaint, I 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 H and the Lender.

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

The Lender does not dispute, and I am satisfied, that Mr and Mrs H's SM 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 SM 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 Mr and Mrs H say that the Supplier did exactly that at the Time of Sale – saying the following during the course of this complaint:

"In 2017, we entered into the Club La Costa Fractional Signature Collection. This was sold to us as a better investment than the points due to having access to better accommodation and would sell better when the time came that we didn't want it anymore and we would make a bigger profit once sold."

Mr and Mrs H allege, therefore, that the Supplier breached Regulation 14(3) at the Time of Sale because:

- (1) There were two aspects to their SM: holiday rights and a profit on the sale of the Allocated Property.
- (2) They were told by the Supplier that they would get their money back or more during the sale of SM.

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

Mr and Mrs H'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. But the fact that SM 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 SM was marketed or sold to Mr and Mrs H 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 SM offered them the prospect of a financial gain (i.e., a profit) given the facts and circumstances of *this* complaint.

There is evidence in this complaint that the Supplier made efforts to avoid specifically describing membership of the Fractional Club as an 'investment' or quantifying to prospective purchasers, such as Mr and Mrs H, the financial value of their share in the net sale proceeds of the Allocated Property along with the investment considerations, risks and rewards attached to them. I say this, because documentation the Supplier provided to Mr and Mrs H as part of the sales pack, shows there were, for instance, disclaimers in the contemporaneous paperwork that state that SM was not sold to Mr and Mrs H as an investment. For example:

- The information statement at paragraph 11 explained that the vendor, and any sales or marketing agent and their related businesses, were not licensed investment advisers authorised by the Financial Conduct Authority to provide investment or financial advice. And any information provided was not intended as a source of investment advice.
- Also, The Member's Declaration document signed by Mr and Mrs H, explained that the purchase of the Fraction was for the primary purpose of holidays and is not specifically for direct purposes of a trade in and that the Supplier makes no representation as to the future price or value of the Fractional Rights which are personal rights and not interests in real estate (all as explained in the information statement).

However, weighing up what happened in practice is, in my view, rarely as simple as looking at the contemporaneous paperwork. And there are a number of strands to Mr and Mrs H's allegation that the Supplier breached Regulation 14(3) at the Time of Sale, including (1) that membership of the Fractional Club was expressly described as an "*investment*" in several different contexts and (2) that membership of the Fractional Club could make them a financial gain and/or would retain or increase in value.

So, I have considered:

- (1) whether it is more likely than not that the Supplier, at the Time of Sale, sold or marketed membership of the Fractional Club as an investment, i.e. told Mr and Mrs H or led them to believe during the marketing and/or sales process that membership of the Fractional Club was an investment and/or offered them the prospect of a financial gain (i.e., a profit); and, in turn
- (2) whether the Supplier's actions constitute a breach of Regulation 14(3).

And for reasons I'll now come on to, given the facts and circumstances of this complaint, I think the answer to both of these questions is 'yes'.

How the Supplier marketed and sold the SM

Over the course of the Financial Ombudsman Service's work on complaints involving Fractional timeshare sales, the Supplier provided training material called "2015 SPAIN FRACTIONALS AT SIGNATURE SUITE COLLECTION SALES TRAINING MANUAL FOR FPOC AND VACATION CLUB OWNERS" ('the Manual') used to train its sales agents in the selling of the product purchased by Mr H.

As I understand it, the Manual was still in use at the time Mr and Mrs H made their purchase. It's not entirely clear whether Mr and Mrs H would have been shown the slides included in the Manual, as they have not referred to them specifically in their testimony, but it seems to me to be reasonably indicative of:

- (1) the training the Supplier's sales agent would have got before selling Mr and Mrs H their SM; and
- (2) how the sales agent would have framed the sale of SM to them.

Having looked through the Manual, I am first drawn to the slide on page 11, which is the first slide that covers the Fractional membership and its purpose. This slide asks the sales agent to "set the scene" by summarising the key events in the Supplier's history to date. It says:

"In recent years our members requested shorter term products so to fulfil that demand we created our Fractional Property Owners Club (FPOC) which is a shorter term product with a fixed asset attached providing an exit in 19 years and money back".

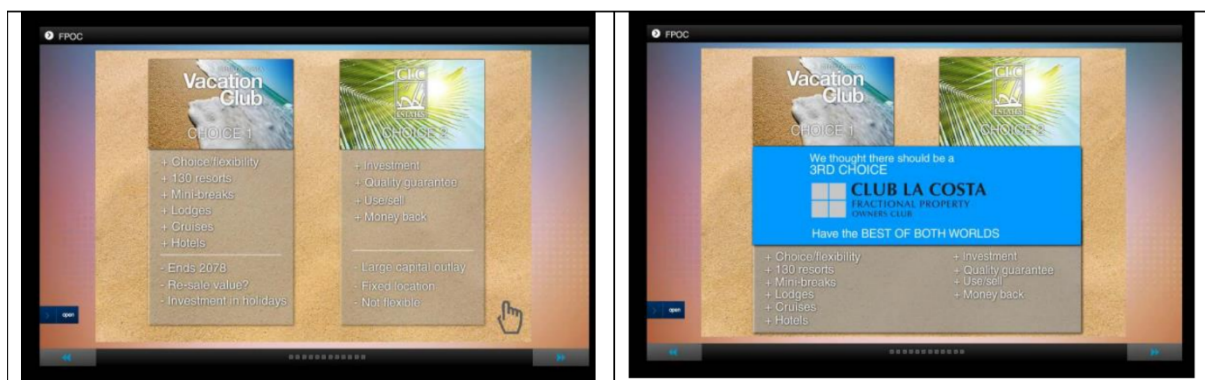
This slide suggests the sales agent was likely to have explained to prospective buyers that purchasing the FPOC product would allow them to own a physical asset – the fraction of a real property – and that it demonstrated to potential customers, like Mr and Mrs H, that there was a significant financial advantage to gaining that membership that set it apart from other available memberships that only provided customers with holiday rights. Indeed, Mr H says in his testimony that he and Mrs H were persuaded to purchase the FPOC membership as it was sold to them as an investment. They said:

"They sold the fractional membership to us as an investment, where when sold, we would make a profit."

So, at the Time of Sale, Mr and Mrs H owned an FPOC membership they say they were induced into purchasing because the Supplier told them they could expect to make a profit upon the sale of an allocated property. Because of this, I think it's unlikely Mr and Mrs H would have agreed to purchase the Signature membership, if they hadn't been persuaded by the Supplier that this would be a better investment than their existing fractional membership. And this is consistent with Mr H's testimony where he says:

"This was sold to us as a better investment than the points due to having access to better accommodation and would sell better when the time came that we didn't want it anymore and we would make a bigger profit once sold".

Lastly, I've considered the slides copied below, which are found on page 106 of the Manual:



These slides appear in a part of the presentation titled *"In House Game Plan for Vacation Club Owners"*. As I've said, Mr and Mrs H were existing 'FPOC' owners, so I don't think they were shown these slides, but I think these slides are indicative of how the Supplier's sales agents would likely have described the Fractional Club membership to prospective customers at that time. And the slides include the Supplier's use of the word "investment" as a reason to purchase the membership. I think it's unlikely the sales agent would have remained silent on the investment element of the Fractional Club membership, given its

importance when distinguishing Fractional Club membership from other types of holiday product that were available to them at the Time of Sale.

I acknowledge that there may not have been a comparison between the expected level of financial return and the purchase price of Fractional Club membership. However, if I were to only concern myself with express efforts to quantify to Mr and Mrs H the financial value of the proprietary interest they were offered, I think that would involve taking too narrow a view of the prohibition against marketing and selling timeshares as an investment in Regulation 14(3).

When the Government consulted on the implementation of the Timeshare Regulations, it discussed what marketing or selling a timeshare as an investment might look like – saying that *‘[a] trader must not market or sell a timeshare or [long-term] holiday product as an investment. For example, there should not be any inference that the cost of the contract would be recoupable at a profit in the future (see regulation 14(3)).’* And in my view that must have been correct because it would defeat the consumer-protection purpose of Regulation 14(3) if the concepts of marketing and selling a timeshare as an investment were interpreted too restrictively.

So, if a supplier *implied* to consumers that future financial returns (in the sense of possible profits) from a timeshare were a good reason to purchase it, I think its conduct was likely to have fallen foul of the prohibition against marketing or selling the product as an investment.

Having considered the training materials I’ve seen from the Supplier in the round, I note that there does not appear to be any attempt to minimise or explicitly reject the notion that the Fractional Club membership contained an investment element. Nor have I seen anything that contradicts or clashes with what Mr H has said about the way the membership was sold to him and Mrs H.

So, overall, I think the Supplier’s sales agent, during Mr and Mrs H’s sale, was likely to have led them to believe that Fractional membership was an investment that may lead to a financial gain (i.e., a profit) in the future. And with that being the case, I don’t find the testimony either implausible or hard to believe when Mr H says he and Mrs H were told this purchase would give them a monetary gain in the future. On the contrary, in the absence of evidence to persuade me otherwise, I think that’s likely to be what they were led by the Supplier to believe at the relevant time. And for that reason, I think the Supplier breached Regulation 14(3) of the Timeshare Regulations.

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

Having found that the Supplier breached Regulation 14(3) of the Timeshare Regulations at the Time of Sale, I now need to consider what impact that breach had on the fairness of the credit relationship between Mr and Mrs H and the Lender under the Credit Agreement and related Purchase Agreement.

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.

It also seems to me in light of *Carney* and *Kerrigan* that, if I am to conclude that a breach of Regulation 14(3) led to a credit relationship between Mr and Mrs H 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.

On my reading of Mr and Mrs H testimony, the prospect of a financial gain from SM was an important and motivating factor when they decided to go ahead with their purchase. They have been consistent in making this point. And I say this because whilst I make no findings on the sales of the Fractional memberships, they purchased prior to the purchase of the SM that is the subject of this complaint, I think it's significant that they have referred to the first Fractional membership purchase, as being sold to them as investment. Moreover, from what I know about the Suppliers training material from the time of those prior sales, I think the Supplier's sales agent, was likely to have led them to believe that Fractional membership was an investment that may lead to a financial gain (i.e., a profit) in the future. As a result, I think it's more likely than not that Mr and Mrs H would have entered into this purchase agreement with a prior understanding that the purchase of the SM complained about, was also an investment. And consequently, I find what they have said about the SM being positioned as a better investment, to be plausible and persuasive.

That doesn't mean they were not interested in holidays. Their own testimony and previous membership demonstrates that they quite clearly were. And that is not surprising given the nature of the product at the centre of this complaint. But as Mr and Mrs H say (plausibly in my view) that SM was marketed and sold to them at the Time of Sale as something that offered them more than just holiday rights, on the balance of probabilities, I think their purchase was motivated by their share in the Allocated Property, the prospect of better quality accommodation and the consequent possibility of a bigger profit. And with that being the case, I think the Supplier's breach of Regulation 14(3) was material to the decision they ultimately made.

Mr and Mrs H have not said or suggested, for example, that they would have pressed ahead with the purchase in question had the Supplier not led them to believe that SM was an appealing investment opportunity. And as they faced the prospect of borrowing and repaying a substantial sum of money while subjecting themselves to long-term financial commitments, had they not been encouraged by the prospect of a financial gain from membership of the Fractional Club, I'm not persuaded that they would have pressed ahead with their purchase regardless.

Conclusion

Given the facts and circumstances of this complaint, I think the Lender participated in and perpetuated an unfair credit relationship with Mr and Mrs H under the Credit Agreement and related Purchase Agreement for the purposes of Section 140A. And with that being the case, taking everything into account, I think it is fair and reasonable that I uphold this complaint.

Fair Compensation

Having found that Mr and Mrs H would not have agreed to purchase SM at the Time of Sale were it not for the breach of Regulation 14(3) of the Timeshare Regulations by the Supplier (as deemed agent for the Lender), and the impact of that breach meaning that, in my view, the relationship between the Lender and Mr and Mrs H was unfair under section 140A of the CCA, I think it would be fair and reasonable to put them back in the position they would have been in had they not purchased the SM (i.e., not entered into the Purchase Agreement), and therefore not entered into the Credit Agreement, provided Mr and Mrs H agree to assign to the Lender their Fractional Points or hold them on trust for the Lender if that can be achieved.

Here's what I think needs to be done to compensate Mr and Mrs H with that being the case – whether or not a court would award such compensation:

- (1) The Lender should refund Mr and Mrs H's repayments to it under the Credit Agreement, including any sums paid to settle the debt, and cancel any outstanding balance if there is one.
- (2) In addition to (1), the Lender should also refund the annual management charges Mr and Mrs H paid as a result of SM.
- (3) The Lender can deduct:
 - i. The value of any promotional giveaways that Mr and Mrs H used or took advantage of; and
 - ii. The market value of the holidays* Mr and Mrs H took using their Fractional Points.

(I'll refer to the output of steps 1 to 3 as the 'Net Repayments' hereafter)

- (4) Simple interest** at 8% per annum should be added to each of the Net Repayments from the date each one was made until the date the Lender settles this complaint.
- (5) The Lender should remove any adverse information recorded on Mr and Mrs H's credit files in connection with the Credit Agreement reported within six years of this decision.
- (6) If Mr and Mrs H's SM is still in place at the time of this decision, as long as they agree to hold the benefit of their interest in the Allocated Property for the Lender (or assign it to the Lender if that can be achieved), the Lender must indemnify them against all ongoing liabilities as a result of their SM.

*I recognise that it can be difficult to reasonably and reliably determine the market value of holidays when they were taken a long time ago and might not have been available on the open market. So, if it isn't practical or possible to determine the market value of the holidays Mr and Mrs H took using their Fractional Points, deducting the relevant annual management charges (that correspond to the year(s) in which one or more holidays were taken) payable under the Purchase Agreement seems to me to be a practical and proportionate alternative in order to reasonably reflect their usage.

**HM Revenue & Customs may require the Lender to take off tax from this interest. If that's the case, the Lender must give Mr and Mrs H a certificate showing how much tax it's taken off if they ask for one.

My final decision

For the reasons I've set out above, my decision is to uphold Mr and Mrs H's complaint about Shawbrook Bank Limited. It needs to calculate and pay Mr and Mrs H compensation, using the methodology set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H and Mrs H to accept or reject my decision before 27 August 2025.

Simon Dibble
Ombudsman