DRN-5728190

The complaint

Mr F 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 F and Mrs F purchased membership of a timeshare (the 'Signature Collection') from a timeshare provider (the 'Supplier') on 30 December 2014 (the 'Time of Sale'). They entered into an agreement with the Supplier to buy 1800 fractional points at a cost of £43,763 (the 'Purchase Agreement').

Signature Collection membership was asset backed – which meant it gave Mr F 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 F and Mrs F paid for their Signature Collection membership by taking finance of £29,763 from the Lender in both of their names (the 'Credit Agreement'). The Credit Agreement says they paid a deposit of £14,000 separate to this. Mr F and Mrs F fully settled the Credit Agreement in September 2018.

Mr F and Mrs F – using a professional representative (the 'PR') – wrote to the Lender on 9 February 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.

3. The decision to lend being irresponsible because the Lender did not carry out the right creditworthiness assessment.

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

Mr F 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 he 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 F 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 F 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 F 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 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 F and Mrs F's concerns as a complaint and issued its final response letter on 21 February 2022, rejecting it on every ground.

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

"The legal and regulatory context

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

I will refer to and set out several regulatory requirements, legal concepts and guidance in this decision, but I am satisfied that of particular relevance to this complaint is:

- *The CCA (including Section 75 and Sections 140A-140C)*
- *The law on misrepresentation.*
- *The Timeshare Regulations.*
- *The CPUT Regulations.*
- *Case law on Section 140A of the CCA – including, in particular:*
    - *The Supreme Court's judgment in Plevin v Paragon Personal Finance Ltd [2014] UKSC61 ('Plevin') (which remains the leading case in this area).*
    - *Scotland v British Credit Trust [2014] EWCA Civ 790 ('Scotland and Reast')*
    - *Patel v Patel [2009] EWHC 3264 (QB) ('Patel').*
    - *The Supreme Court's judgment in Smith v Royal Bank of Scotland Plc [2023] UKSC 34 ('Smith')*
    - *Carney v NM Rothschild & Sons Ltd [2018] EWHC 958 ('Carney').*
    - *Kerrigan v Elevate Credit International Ltd [2020] EWHC 2169 (Comm) ('Kerrigan').*
    - *R (on the application of Shawbrook Bank Ltd) v Financial Ombudsman Service Ltd*

- *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').*
  and
- *Link Financial Ltd v Wilson [2014] EWHC 252 (Ch)*

Relevant Guidance – Goode: Consumer Credit Law and Practice

Goode: Consumer Credit Law and Practice is a widely recognised expert commentary on the application of the Consumer Credit Act 1974 and related legislation. It offers relevant guidance to certain of the matters at hand in this complaint.

Good industry practice – the RDO Code

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

My provisional findings

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

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

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: How First Holiday Finance dealt with Mr F and Mrs F's claims about C's alleged misrepresentations at the Time of Sale and possible breach of contract[1]

Certain conditions must be met for section 75 to apply including, but not limited to, the cash price of the purchase and the nature of the arrangements between the parties involved in the transaction. Because of the way in which section 75 operates, if the Supplier is liable for having misrepresented something to Mr F and Mrs F at the Time of Sale or has breached its contract with them, that might give rise to a potential joint and several liability on the part of the Lender. Equally, of course, if the Supplier has a defence to such a claim, that defence is also available to the Lender.

Our investigator noted that the Limitation Act 1980 might afford a complete defence to the section 75 claim made by Mr F and Mrs F. The PR takes a different view. However, I've not found it necessary to reach a conclusion on that line of argument, because I'm not inclined to find that the conditions necessary to bring a section 75 claim are met in this case.

[1] Mr F and Mrs F's Witness Statement contains some comments that are capable of interpretation as allegations of a breach of contract in relation to the availability of properties under their Fractional Club membership

I say this because it's my understanding that when Mr F and Mrs F entered into the Credit Agreement in December 2014, they did so with First Holiday Finance Ltd based in the British Virgin Islands ("FHFBVI") and operating from the Isle of Man, rather than the UK entity of the same name. The UK entity has provided us with evidence that shows it wasn't engaged in regulated lending activity until it applied for permission from the Financial Conduct Authority ("FCA") in 2015. On 1 August 2015, FHFBVI assigned its loan book (including Mr F and Mrs F's loan) to the UK entity First Holiday Finance.

Section 75 enables a claim to be brought against the creditor. At the time the Credit Agreement was made, the creditor was FHFBVI. While FHFBVI assigned its loan book to First Holiday Finance, it didn't necessarily follow that its duties or other obligations – such as any potential liability for a section 75 claim – were similarly assigned. Although the CCA section 189(1) definition of creditor includes an assignee, Goode[2] indicates that this shouldn't be interpreted as creating a positive liability on the assignee for a monetary claim under (among other things) section 75.

That's not to say that a claim can't be made along the lines outlined by Mr F and Mrs F. Rather, it highlights the inherent difficulty they might face in succeeding with that claim. And with this in mind, I can't say that the Lender acted unfairly or unreasonably towards Mr F and Mrs F when it declined to pay them compensation for the claims they said it was liable for under section 75.

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

I've explained why I'm not persuaded Mr F and Mrs F's relationship with the Lender could lead to a successful section 75 claim and outcome in this complaint. But Mr F and Mrs F also make arguments that either say or infer 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 C's representations and parts of its sales process at the Time of Sale they've mentioned.

Mr F and Mrs F's loan from FHFBVI was written under English law and regulated under the CCA. The Lender acquired and continued to administer the loan until Mr F and Mrs F settled it in September 2018, so section 140A of the CCA is relevant law. It is not subject to the same difficulty as their section 75 claim.[3] So determining what's fair and reasonable in all the circumstances of the complaint includes considering whether the credit relationship between Mr F and Mrs F and the Lender was unfair.

Under section 140A, 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).[4]

Such a finding may also be based on the terms of any related agreement (which here, includes the Purchase Agreement) and 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.

I see no great difficulty with the position that the Supplier is deemed agent of FHFBVI for the

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[2] 2 Goode: Consumer Credit Law and Practice – Division I Commentary – Part IC Consumer Credit Legislation – 45A Assignment – III Assignment and the CCA 1974: the assignee as creditor/lender or owner – 1 The basic rule – Pre-assignment breaches (para 45A.62)

[3] Goode (para 45A.65) indicates that section 140B empowers a Court to impose a positive liability on an assignee

[4] Section 140A(1) of the CCA

purpose of the pre-contractual negotiations, nor with the possibility referenced in Goode that the operation of sections 140A through 140C effectively extend the deemed agent provision to First Holiday Finance after the loan was assigned to it.

With this in mind I've considered the entirety of the credit relationship between Mr F and Mrs F and the Lender along with all of the circumstances of the complaint. Having done so, I don't think the credit relationship between them was likely to have been rendered unfair for section 140A purposes.

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 F 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 F 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 F and Mrs F. If there is any further information on this (or any other points raised in this provisional decision) that Mr F 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 F and Mrs F's credit relationship with the Lender was rendered unfair to them under Section 140A for the reason 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 F 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 F 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 Fractional Club. They just regulated how such products were marketed and sold.

To conclude, therefore, that Signature Collection membership was marketed or sold to Mr F 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 F 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 F 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.

<u>Was the credit relationship between the Lender and Mr F and Mrs F rendered unfair?</u>

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 F 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 F 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 F 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, there is very little in the Letter of Complaint which appears to include any of Mr F

and Mrs F's individual recollections from the Time of Sale. So, it seems they were not Mr F and Mrs F's own words.

That is not to say that the Letter of Complaint could not possibly have reflected Mr F and Mrs F's experience at the Time of Sale. However, in this particular case I think the evidence, including a personal statement the PR provided from Mr F and Mrs F in August 2023,suggests 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 F and Mrs F describe some of their recollections of the sale in their own words. In respect of Signature Collection membership being sold as an investment they said:

"We were informed that our ownership would increase in value and that it would be an investment. We were also told that the property would be willing to sell and that the resort would gladly buy it back as there were many who were waiting to buy such luxury properties. We should consider ourselves very lucky to have been offered first choice of such exclusive apartments."

And;

"We were definitely informed by the representatives that the ownership was valuable, had monetary value of some kind and could be transferrable in one's Will"

There's very little in these statements to suggest that the prospect of a profit or financial gain was material to Mr F and Mrs F's decision to purchase. It's also not entirely clear from the statement exactly which purchase Mr F and Mrs F are describing as they say earlier in the statement that they made several purchases from the supplier, both before and after the one that forms the basis of this complaint, and they do not specifically reference this particular purchase. But even if Mr F and Mrs F were describing the purchase that forms the basis of this complaint, it's not clear enough to me from that description that they relied on any statement made by the Supplier which promoted the benefit of Signature Collection membership as an investment that would bring a financial gain or profit when making their decision to purchase it. Although Mr F and Mrs F say they were told their "ownership would increase in value" I don't read that to mean it was a reason they purchased Signature Collection membership.

I note also that Mr F and Mrs F said they had existing fractional membership/points with the Supplier however it does not appear they traded any of these in for Signature Collection membership – which is common from what I have seen. This suggests to me that the prospect of the preferential right to use the Allocated Property on the allotted week, while still holding the flexibility of the points in their existing membership was likely to have been an important reason for the purchase. It appears Mr F and Mrs F also purchased additional Signature Collection membership at another allocated property not long after this purchase, again suggesting the prospect of the preferential right over an allocated property was something that strongly appealed to them.

It's possible that Mr F 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 F 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 F 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 F 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 F 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 F 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 F 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 and the Client Compliance Confirmation document was representing the company named on the Credit Agreement 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 F 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."

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

The PR said Mr F and Mrs F didn't agree with my provisional decision and provided more testimony in support of their complaint. 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 F 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 has provided further testimony from Mr F and Mrs F which I can see was obtained in July 2025. I note this has been provided nearly eleven years after the Time of Sale. Memories can fade in that time, so I don't think this testimony, in this particular case carries as much weight as evidence from closer to the Time of Sale, such as Mr F and Mrs F's first witness statement which they say was provided before February 2021. And I remain of the view having seen this witness statement that it does not demonstrate that the Supplier's potential breach of Regulation 14(3) of the Timeshare Regulations was not material to Mr F and Mrs F's decision.

Looking at the new testimony in any event, I note that when asked by the PR about what 'convinced' them to purchase Signature Collection membership Mr F and Mrs F said "*The main reason was that it could be sold back to (the Supplier) or could be sold at a profit at the end of the term*. *When we bought it our kids were from (X) to (X) years old*, w*e thought that it was not a lifetime investment, we would probably not wait until the end of the term and once the children grow up we would sell it back, so the option to sell it back to (the Supplier) was attractive".*

From what I have seen of the Supplier's training material from the Time of Sale, such as presentation slides, and guidance for sales persons, it is not alluded to that the Supplier would buy back Signature Collection membership, nor that a profit or financial gain may be achieved by selling the membership before the end of the term i.e. before the Allocated Property had been sold and the sale proceeds had been distributed to fractional owners.

I note also that within a member's declaration document that Mr F and Mrs F signed to confirm they had read and understood it says "…(The Supplier)…*does not and will not run any resale or rental programmes and will not repurchase fractional rights*".

So, the evidence does not point towards Fractional Collection membership having been marketed by the Supplier as something that could generate a profit if sold back to the Supplier before the end of the term, and neither does that seem like a plausible scenario given that the Allocated Property needs to be sold before members receive their share of the proceeds from that sale. And, given how unlikely it seems in principle that the Supplier would commit to buying something back from Mr F and Mrs F for more than they sold it for.

Thinking about this, it does not seem likely the Supplier marketed Signature Collection membership as something that could be sold back to it at a profit before the Allocated Property was sold. From what I have seen, if there was a breach of regulation 14(3) of the Timeshare Regulations it seems more likely to have been because the Supplier marketed it as something that could make a profit or provide a financial gain at the end of the term and after the Allocated Property had been sold. However, from what they have said that doesn't appear to be something that was material to Mr F and Mrs F's decision to purchase because in their mind it appears they didn't think they'd still have their membership by the time the Allocated Property came to be sold.

Taking all of this into consideration, it seems that if Mr F and Mrs F's latest testimony is to be given any weight, although they said they bought Signature Collection membership because *"it could be sold at the end of the term*", they go on to state that it wasn't their intention to remain members for this long and it seems their motivation to purchase Fractional Collection membership was in fact based on (a likely mistaken) belief they would sell it back to the Supplier during the term of the membership at a profit and not because they were told they could make a profit at the end of the term. It doesn't appear therefore that the Supplier's potential breach of Regulation 14(3) of the Timeshare Regulations would have been material to Mr F and Mrs F's decision to purchase and it seems they would have gone ahead with the purchase anyway.

The PR said that the exact percentage of Mr F and Mrs F's fraction was handwritten on the pricing sheet given to them by the Supplier and this shows the investment element must have played an important role in convincing them to purchase. I've seen the pricing sheet, and I can see that a 'unit share' of 1.66% is contained on the sheet among lots of other information such as the cost of Signature Collection membership, the trade in value of Mr F and Mrs F's existing timeshare, and the amount of finance. However, all the pricing sheet does is display information about the unit share i.e. that their fraction is nearly 2/100th. It's not a persuasive reason to find Signature Collection membership was marketed as investment (which I reiterate I've found was possible for other reasons) as it doesn't imply a profit or financial gain. So, it's not persuasive evidence that profit or financial gain were the motivating factors in Mr F and Mrs F's purchase.

, I therefore remain unpersuaded that Mr F and Mrs F's relationship with the Lender was unfair under s.140a CCA because of any potential breach of Regulation 14(3) of the Timeshare regulations by the Supplier.

In conclusion, given the facts and circumstances of this complaint, and for the reasons I have explained here, and within the extract of my provisional decision above, I still do not think that the Lender acted unfairly or unreasonably when it dealt with Mr F 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 F and Mrs F's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F and Mrs F to accept or reject my decision before 1 September 2025.

Michael Ball
Ombudsman