

The complaint

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

What happened

Mr and Mrs D purchased membership of a timeshare (the 'Fractional Club') from a timeshare provider (the 'Supplier') on 20 July 2015 (the 'Time of Sale'). They entered into an agreement with the Supplier to buy 1,620 fractional points for which they paid £6,768 (the 'Purchase Agreement') after trading in their existing Fractional Club membership, which included 1,200 fractional points purchased in 2013.

Fractional Club membership was asset backed – which meant it gave Mr and Mrs D 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. When trading in their existing Fractional Club membership, Mr and Mrs D exchanged a one-week fraction (1.93%) of a one-bed apartment for a two-week fraction (3.86%) of a one-bed apartment in a different resort.

Mr and Mrs D paid for their Fractional Club membership by taking finance of £21,488 from the Lender (the 'Credit Agreement'). This included £14,720 used to pay off the loan Mr and Mrs D had taken out in 2013 and which paid for their 2013 purchase of Fractional Club membership. I have separately issued a decision on the complaint about the 2013 sale, which I upheld.

Mr and Mrs D – using a professional representative (the 'PR') – wrote to the Lender on 8 December 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.

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

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

1. Told them that Fractional Club membership had a guaranteed end date when that was not true.
2. Told them that Fractional Club membership was a mechanism for property ownership when that was not true.

3. Told them that Fractional Club membership was an “investment” when that was not true.

Mr and Mrs D 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 D.

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

The Letter of Complaint set out several reasons why Mr and Mrs D 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. They were pressured into entering into the Purchase Agreement and Credit Agreement.
2. The Supplier misled Mr and Mrs D by telling them that:
 - a. They would own a share in a property.
 - b. Fractional Club membership was an investment.
 - c. They would make a profit on the purchase price when the Allocated Property was sold.
3. Fractional Club 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’).
4. The contractual terms setting out the duration of their Fractional Club membership were unfair terms under the Unfair Terms in Consumer Contract Regulations 1999 (the ‘UTCCR’).
5. 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.
6. No affordability checks were carried out to determine whether Mr and Mrs D could afford the loan.
7. The Supplier failed to provide sufficient information in relation to the Fractional Club’s ongoing costs, in breach of Regulation 12 of the Timeshare Regulations.
8. Mr and Mrs D were not told that the Lender paid the Supplier commission in relation to the Credit Agreement.

The Lender dealt with Mr and Mrs D’s concerns as a complaint and issued its final response letter on 28 December 2023, rejecting it on every ground.

Mr and Mrs D then referred the complaint to the Financial Ombudsman Service – when doing so the PR made the further allegation that the Supplier was in liquidation and, therefore, in breach of contract. It was assessed by an Investigator who, having considered the information on file, rejected the complaint on its merits.

The PR told us that Mr and Mrs D disagreed with the Investigator's assessment and asked why their complaint about their 2013 purchase had been upheld and this had not, given the sale happened in the same way.

Our Investigator explained that Mr and Mrs D had not provided a statement setting out their recollections of what happened at the Time of Sale (despite the Investigator requesting this) and referred the complaint for an Ombudsman's decision – which is why it was passed to me.

I asked for Mr and Mrs D's recollections from the Time of Sale, which they provided on 11 December 2024 (and which was signed by them on 9 December 2024). I have provided a copy of this to the Lender and issued a provisional decision explaining why I was not planning to uphold this complaint.

The Lender said it agreed with my provisional decision. The PR responded to say that Mr and Mrs D disagreed but provided no reasons and no further comments or evidence for me to consider.

I issued a follow-up email explaining why I was not planning to uphold the complaint in relation to the commission arrangements between the Lender and Supplier in relation to the Credit Agreement. The PR confirmed it had nothing further to add before I made this final decision.

The legal and regulatory context

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

The legal and regulatory context that I think is relevant to this complaint is no different to that shared in several hundred ombudsman decisions on very similar complaints. And with that being the case, it is not necessary to set it out here. But the following regulatory rules/guidance are also relevant:

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

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

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

The FCA's Principles

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

- Principle 6
- Principle 7
- Principle 8

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.

Because there is nothing further for me to consider, I've decided not to uphold this complaint, for the same reasons given in my provisional decision and follow-up email, which are repeated below.

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. 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 and Mrs D 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 and Mrs D at the Time of Sale, the Lender is also liable. I'll discuss each alleged misrepresentation in turn.

Guaranteed end date

This allegation is set out in the Letter of Complaint but isn't referred to in Mr and Mrs D's evidence, so it's very difficult to know precisely what was alleged to have been said. So, I've considered the available evidence to see whether there was any possible misrepresentation made.

Under Fractional Club membership, the Allocated Property was to be placed for sale on a set future date, normally at the end of the nineteenth year after it was taken out. As I understand it, under the relevant Fractional Club Rules, the sale of the Allocated Property could be postponed for up to two years, longer than that if there were problems selling and the 'Owners' agreed, or for an otherwise specified period provided there was unanimous agreement in writing from the Owners. This means that, other than in exceptional circumstances, it appears that the property would be sold, and the membership would end. So, without more detail about precisely what was said, I am not persuaded that the general representation above constituted a false statement of fact even if it was made.

Furthermore, there is nothing in the training or sales material I have seen to suggest that the Supplier's sales representatives were instructed or encouraged to tell prospective members, including Mr and Mrs D, that the sale of the allocated properties were guaranteed to take place on a specific future date. And there is nothing in the contemporaneous paperwork given to Mr and Mrs D before they committed to their purchase that stated that either. So, I am not persuaded that the Supplier made a representation to Mr and Mrs D that guaranteed an end to their Fractional Club membership at a given time.

Mechanism for property ownership

Mr and Mrs D say that Fractional Club membership was misrepresented by the Supplier because they were told that Fractional Club membership was a mechanism for property ownership when that was not true. However, telling prospective members that they would own a fraction or share of one of the Supplier's properties was not untrue. Mr and Mrs D'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.

Fractional Club membership was an investment

The PR said this was untrue because Mr and Mrs D didn't obtain an interest in the Allocated Property. I have dealt with this above, where I have concluded that they effectively did obtain an interest in the Allocated Property, so I think that the PR's argument fails on that point.

In addition to this, Mr and Mrs D's share in the Allocated Property, in my view, did constitute 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. The Fractional Club rules meant that at the end of the membership term the Allocated Property would be sold, and no one party could block that. And once the sale happened Mr and Mrs L would stand to get something back, which could be more than what they paid for it. So again, if this statement was made, it wouldn't be untrue.

Summary – Misrepresentation

I am not persuaded that there were any false statements of existing fact made to Mr and Mrs D by the Supplier at the Time of Sale. As such, I do not think there was an actionable misrepresentation by the Supplier for the reasons they allege.

For these reasons, therefore, I do not think the Lender is liable to pay Mr and Mrs D any compensation for the alleged misrepresentations of the Supplier. And with that being the case, I do not think the Lender acted unfairly or unreasonably when it dealt with the Section 75 claim in question.

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

I've already summarised how Section 75 of the CCA works and why it gives Mr and Mrs D a right of recourse against the Lender. So, it isn't necessary to repeat that here other than to say that, if I find that the Supplier is liable for having breached the Purchase Agreement, the Lender is also liable.

Mr and Mrs D also say that the Supplier breached the Purchase Agreement because it went into liquidation, which jeopardised the sale of the Allocated Property. I can see that certain parts of the Supplier's business were put into administration. And I can understand why the PR is alleging that there was a breach of the Purchase Agreement as a result. However, neither Mr and Mrs D nor the PR have said, suggested or provided evidence to demonstrate that because of that administration they are no longer:

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

Overall, therefore, from the evidence I have seen to date, I do not think the Lender is liable to pay Mr and Mrs D any compensation for a breach of contract by the Supplier. And with that being the case, I do not think the Lender acted unfairly or unreasonably when it dealt with the Section 75 claim in question.

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

I've already explained why I'm not persuaded that Fractional Club membership was actionably misrepresented by the Supplier at the Time of Sale. But there are other aspects of the sales process that, being the subject of dissatisfaction, I must explore with Section 140A in mind if I'm to consider this complaint in full – which is what I've done next.

Having considered the entirety of the credit relationship between Mr and Mrs D and the Lender along with all of the circumstances of the complaint, I don't 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 standard of the Supplier's commercial conduct – which includes its sales and marketing practices at the Time of Sale along with any relevant training material;
2. The provision of information by the Supplier at the Time of Sale, including the contractual documentation and disclaimers made by the Supplier;
3. The commission arrangements between the Lender and the Supplier at the Time of Sale and the disclosure of those arrangements;
4. Evidence provided by both parties on what was likely to have been said and/or done at the Time of Sale;
5. The inherent probabilities of the sale given its circumstances; and, when relevant
6. Any existing unfairness from a related credit agreement.

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

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

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

Pressure

Mr and Mrs D say that they were pressured by the Supplier into purchasing Fractional Club membership at the Time of Sale. I acknowledge that they may have felt weary after a sales process that went on for a long time. But they say little about what was said and/or done by the Supplier during their sales presentation that made them feel as if they had no choice but to purchase Fractional Club membership when they simply did not want to.

Mr and Mrs D were also given a 14-day cooling off period and they have not provided a credible explanation for why they did not cancel their membership during that time. And with all of that being the case, I find that there is insufficient evidence to demonstrate that Mr and Mrs D made the decision to purchase Fractional Club membership because their ability to exercise that choice was significantly impaired by pressure from the Supplier.

The Supplier misled Mr and Mrs D

Mr and Mrs D say that the Supplier misled them for the same reasons they gave for their Section 75 claim for misrepresentation, as well as by telling them that they would make a profit when the Allocated Property is sold.

I've explained above why I do not think the supplier made the alleged statements, or why even if the Supplier did make these statements, they were not untrue and therefore not misrepresentations. I think it follows that they were not misleading either. Further, for the reasons I'll explain below, I do not think that any statement was made that Mr and Mrs D *would* make a profit or, if it was, I do not think it was material to their purchasing decision that warranted a remedy.

Unfair contract terms in relation to the length of membership

Mr and Mrs D's signed Information Statement made it clear in Part 1 that membership ran for 19 years. And it looks like the sale of the Allocated Property could only be postponed for two years in limited circumstances that were not unusual or unreasonable (or longer with the unanimous agreement of the fractional owners). So, I am not persuaded that the terms dealing with the length of membership would be found unfair by a court for the purposes of the UTCCR, such that it would play a part in rendering the credit relationship between the Lender and Mr and Mrs D unfair to them under Section 140A.

Breach of CPUT Regulations

Mr and Mrs D say that the Supplier misled them and carried on unfair commercial practices which were prohibited under the CPUT Regulations for the same reasons they gave for their Section 75 claim for misrepresentation. But given the evidence in this complaint, I am not persuaded that anything done or not done by the Supplier was prohibited under the CPUT Regulations. That is largely because I have not found that the Supplier misrepresented Fractional Club membership or misled Mr and Mrs D.

Affordability checks

The PR says that the right checks weren't carried out before the Lender lent to Mr and Mrs D. I haven't seen anything to persuade me that was the case in this complaint given its circumstances. But even if I were to find that the Lender failed to do everything it should

have when it agreed to lend (and I make no such finding), I would have to be satisfied that the money lent to Mr and Mrs D 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.

From the information provided, I am not satisfied that the lending was unaffordable for Mr and Mrs D.

Summary

I'm not persuaded that Mr and Mrs D'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 why they say their credit relationship with the Lender was unfair to them. And that's the suggestion that Fractional Club membership was marketed and sold to them as an investment in breach of the prohibition against selling timeshares in that way.

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

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

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

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

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

The term "investment" is not defined in the Timeshare Regulations. In *Shawbrook & BPF v 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.

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

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

To conclude, therefore, that Fractional Club membership was marketed or sold to Mr and Mrs D as an investment in breach of Regulation 14(3), I have to be persuaded that it was more likely than not that the Supplier marketed and/or sold membership to them as an investment, i.e. told them or led them to believe that Fractional Club membership offered

them the prospect of a financial gain (i.e., a profit) given the facts and circumstances of *this* complaint.

However, while I acknowledge the possibility that Fractional Club membership was marketed or sold to Mr and Mrs D as an investment in breach of Regulation 14(3), in this case I do not think it is necessary to make a finding on that point. This is because I am not persuaded that the investment potential of Fractional Club membership (in terms of making a profit or financial gain) was a material factor in Mr and Ms D's decision to go ahead with the purchase. I explain my reasons for this below.

Was the credit relationship between the Lender and Mr and Mrs D 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 and Mrs D and the Lender that was unfair to them and warranted relief as a result, then an important consideration is whether the Supplier's breach of Regulation 14(3) (which, having taken place during its antecedent negotiations with Mr and Mrs D, 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) led them to enter into the Purchase Agreement and the Credit Agreement.

By way of background, before Mr and Mrs D bought the Fractional Club membership that forms the subject matter of this complaint, they purchased a similar membership from the Supplier in September 2013. Again, this was funded by a loan from the Lender. In August 2018, the PR made a complaint on Mr and Mrs D's behalf to the Lender and, when the complaint was rejected, it was referred to our service. At the same time Mr and Mrs D provided a narrative statement dated March 2018 setting out their memories of the 2013 sale.

In December 2023, one of our Investigators thought Mr and Mrs D's complaint about that ought to be upheld. That was because he thought the Supplier had breached Regulation 14(3) when selling that membership and that breach led to an unfairness that required a remedy. I went on to issue a decision on that complaint, upholding it for the same reason.

As mentioned above, the complaint I am deciding now was not made until 8 December 2022, over four years after Mr and Mrs D complained about their 2013 purchase of Fractional Club membership. Further, although the Letter of Complaint said the 2015 sale breached Regulation 14(3) it did not contain any information about why Mr and Mrs D said that was the case, nor (unlike the earlier complaint) was it accompanied with any evidence from them. On the face of it, I find it hard to understand, given the complaint about the 2013 sale included Mr and Mrs D's concerns about Fractional Club membership having been sold to them as an investment, why they would neglect to make a similar complaint about the Purchase Agreement at the same time. Especially as they had professional representation at that stage.

Further, it was not until 9 December 2024 that Mr D provided his recollections of what happened at the Time of Sale (20 July 2015). So, Mr D's recollections are from over nine years after the Time of Sale. That is some considerable time later, and memories tend to be more reliable the closer they are to the events being recalled. And by December 2024 an Investigator had issued an assessment upholding Mr and Mrs D's complaint about the 2013 sale for the reason that it had been sold to them as an investment. This means there is a substantial risk that, whether consciously or not, Mr and Mrs D's recollections of what they were told at the Time of Sale may have been influenced by what has happened since. Memories can change over time, and this is more likely to happen the more time that has passed since the events being recalled. This makes it hard for me to place significant weight on Mr and Mrs D's recollections in this case. Particularly considering them alongside the fact that they did not make the complaint sooner.

Prior to the Letter of Complaint (dated 8 December 2022), there is no indication that Mr and Mrs D were dissatisfied with the Purchase Agreement they had entered into, despite them having gone to the effort of complaining about their earlier membership. I asked the PR about this, and it said that Mr and Mrs D had simply not told them about the later purchase. Accepting that at face value, it suggests to me that Mr and Mrs D simply were not dissatisfied with the Purchase Agreement before 2022. I say this because I can see no reason why, if they were dissatisfied with the Purchase Agreement, they would not have discussed this with the PR back in 2018 when discussing their original purchase of Fractional Club membership. Afterall, the complaint I am considering is very similar to their earlier complaint, when considering the reasons they were unhappy.

All of this suggests to me that even if Fractional Club membership was sold or marketed to Mr and Mrs D as an investment at the Time of Sale, this was not a material factor in their decision to enter into the Purchase Agreement.

The Supplier's notes made around the Time of Sale suggest there were other reasons why Mr and Mrs D made the purchase, being:

- They saw the benefits of a multi-week fraction as opposed to the single week they were trading in – I understand under the 2015 membership they were entitled to ‘2 for 1’ offers and free upgrades.
- They were enjoying the holiday opportunities that their existing Fractional Club membership gave them.
- The monthly repayments of the Credit Agreement, which consolidated the loan taken in 2013, were lower than the 2013 loan and they saw this as offsetting the higher management charges.

I do not think it likely that, had the Supplier breached Regulation 14(3), that would have been recorded in the notes, due to the clear prohibition in that provision. However, I do think the notes give some context to the sale. The notes also show that Mr and Mrs D had indicated to the Supplier that although they would like to invest in property abroad, they did not feel that it was the right time to do so at the Time of Sale, due to their financial position. They said they had already invested in property before and, to me, this suggests that Mr and Mrs D drew a distinction between their existing property investment and the 2015 Purchase Agreement, i.e. it is unlikely that they viewed it as being an investment (as defined above).

On balance, therefore, I do not think there is sufficient evidence for me to reasonably conclude that, even if the Supplier had marketed or sold the Fractional Club membership as an investment in breach of Regulation 14(3) of the Timeshare Regulations, Mr and Mrs D’s decision to purchase Fractional Club membership at the Time of Sale was motivated by the prospect of a financial gain (i.e., a profit). And for that reason, I do not think the credit relationship between Mr and Mrs D and the Lender was unfair to them even if the Supplier breached Regulation 14(3).

I have separately upheld Mr and Mrs D’s complaint about the 2013 sale of Fractional Club membership. And in putting that right I said that fair compensation should take into account any unfairness that followed through into the Purchase Agreement and directed the redress needed to be paid for that. It follows that, although the earlier purchase and loan agreements are associated agreements with the Credit Agreement, I do not need to consider that further as my separate decision on the 2013 sale deals with that issue.

Further, while I am mindful that Mr and Mrs D may have viewed memberships such as Fractional Club membership generally as investments because of what happened in 2013, I do not think that is sufficient to uphold this complaint. I say that because to do so I need to be satisfied that the Credit Relationship was rendered unfair to Mr and Mrs D because of what the Supplier or the Lender did at the Time of Sale. But in this case, I have concluded that there is insufficient evidence to justify such a conclusion.

The provision of information by the Supplier at the Time of Sale

It is clear from the submissions of everyone involved in this complaint that there was a lot of information passed between the Supplier and Mr and Mrs D when they purchased membership of the Fractional Club at the Time of Sale. But they and PR say that the Supplier failed to provide them with all of the information they needed to make an informed decision.

PR also says that the contractual terms governing the ongoing costs of Fractional Club membership and the consequences of not meeting those costs were unfair contract terms under the Unfair Terms in Consumer Contract Regulations 1999 (‘UTCCR’).

One of the main aims of the Timeshare Regulations and the UTCCR was to enable

consumers to understand the financial implications of their purchase so that they were put in the position to make an informed decision. And if a supplier's disclosure and/or the terms of a contract did not recognise and reflect that aim, and the consumer ultimately lost out or almost certainly stands to lose out from having entered into a contract whose financial implications they didn't fully understand at the time of contracting, that may lead to the Timeshare Regulations and the UTCCR being breached, and, potentially the credit agreement being found to be unfair under Section 140A of the CCA.

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

Given the facts and circumstances of this complaint, I am not persuaded that the Supplier's alleged breaches of regulation 12 of the Timeshare Regulations and the UTCCR are likely to have prejudiced Mr and Mrs D's purchasing decision at the Time of Sale and rendered their credit relationship with the Lender unfair to them for the purposes of section 140A of the CCA.

It is possible that some of the terms governing the Fractional Club's ongoing costs go against the requirements of the UTCCR. But even if some of the terms in question did constitute unfair contract terms under the UTCCR, it seems unlikely to me that they led to any actual unfairness in the credit relationship between Mr and Mrs D and the Lender for the purposes of Section 140A. I cannot see that the potentially offending terms were operated against Mr and Mrs D during the time that they were party to the Credit Agreement – nor can I see that there were any ongoing effects of unfairness because of the terms in question. And with that being the case, I cannot see that the potential unfairness of those terms eventuated in practice.

Commission

Mr and Mrs D say that a payment of commission from the Lender to the Supplier at the Time of Sale should lead me to uphold this complaint because, simply put, information in relation to that payment went undisclosed at the Time of Sale.

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

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

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

1. The size of the commission (as a percentage of the total charge for credit). In Mr Johnson's case it was 55%. This was "so high" and "a powerful indication that the relationship...was unfair" (see paragraph 327);

2. The failure to disclose the commission; and
3. The concealment of the commercial tie between the car dealer and the lender.

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

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

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

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

Based on what I've seen, the Supplier's role as a credit broker wasn't a separate service and distinct from its role as the seller of timeshares. It was simply a means to an end in the Supplier's overall pursuit of a successful timeshare sale. I can't see that the Supplier gave an undertaking – either expressly or impliedly – to put to one side its commercial interests in pursuit of that goal when arranging the Credit Agreement. And as it wasn't acting as an agent of Mr and Mrs D but as the supplier of contractual rights that they obtained under the Purchase Agreement, the transaction doesn't strike me as one with features that suggest the Supplier had an obligation of 'loyalty' to them when arranging the Credit Agreement and thus a fiduciary duty.

I haven't seen anything to suggest that the Lender and Supplier were tied to one another contractually or commercially in a way that wasn't properly disclosed to Mr and Mrs D, nor have I seen anything that persuades me that the commission arrangement between them gave the Supplier a choice over the interest rate that led Mr and Mrs D into a credit agreement that cost disproportionately more than it otherwise could have.

What's more, in stark contrast to the facts of Mr Johnson's case, as I understand it, no payment between the Lender and the Supplier, such as a commission, was payable when the Credit Agreement was arranged at the Time of Sale. And with that being the case, even if there were information failings at that time and regulatory failings as a result (which I make no formal finding on), I'm not persuaded that the commercial arrangements between the Supplier and the Lender were likely to have led to a sufficiently extreme inequality of knowledge that rendered the credit relationship unfair to Mr and Mrs D.

Conclusion

In conclusion, I do not think that the Lender acted unfairly or unreasonably when it dealt with the relevant Section 75 claim, and I am not persuaded that the Lender was party to credit relationships with Mr and Mrs D under the Credit Agreements that were unfair to them for the purposes of Section 140A of the CCA – nor do I see any other reason why it would be fair or reasonable to direct the Lender to compensate them.

My final decision

For the reasons I've explained, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D and Mrs D to accept or reject my decision before 2 January 2026.

Phillip Lai-Fang
Ombudsman