

The complaint

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

What happened

In 1991, Mr and Mrs P purchased a floating week timeshare. In 1993, they traded this in to purchase a different floating week in higher season. In 1994 they traded this in towards purchasing 65 timeshare points to spend on holidays. In 1995, Mr and Mrs P purchased a further 95 timeshare points.

By 2011, the timeshare had changed to be provided by a different timeshare provider (the 'Supplier') and Mr and Mrs P's 160 timeshare points had been converted into 16,000 European Collection points, which they could use to purchase holidays through the Supplier and its affiliates. In August 2011, Mr and Mrs P purchased an additional 2,000 European Collection points, giving them a total of 18,000 points.

On 18 October 2014, Mr and Mrs P traded in 6,000 of their European Collection points towards the purchase of 6,000 Fractional Points and membership of the Supplier's Fractional Owners Club (the 'Fractional Club'). This means they had 6,000 Fractional Points and 12,000 European Collection Points.

In terms of purchasing holidays, Fractional Points worked and were valued the same as European Collection Points. However, unlike European Collection membership, Fractional Club membership was asset backed in that it also gave Mr and Mrs P a share in the net sale proceeds of a property named on their Purchase Agreement (the 'Allocated Property') after their membership term ends.

The membership term for European Collection ends in 2054, whereas Mr and Mrs P's Fractional Club membership term was due to end in 2029 – 15 years earlier.

After trading in their 6,000 European Collection Points (which were given a trade-in value of £6,000) Mr and Mrs P paid an additional £7,600 for their Fractional Club membership (so, the purchase price was £13,600) by taking finance of £7,500 from the Lender in both their names (the 'Credit Agreement') and making a separate payment of £100.

Mr and Mrs P paid off the Credit Agreement on 5 November 2016, at the end of the 24-month term.

In May 2016, Mr and Mrs P purchased a further 8,500 European Collection points. Mr and Mrs P – using a professional representative (the 'PR') – wrote to the Lender on 7 January 2022 (the 'Letter of Complaint') to complain about:

1. Misrepresentations by the Supplier at the Time of Sale giving them a claim against the Lender under Section 75 of the CCA, which the Lender failed to accept and pay.

2. The Lender being party to an unfair credit relationship under the Credit Agreement and related Purchase Agreement for the purposes of Section 140A of the CCA.

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

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

1. Fractional Club membership was an investment that gave them an automatic right to exit the timeshare at an agreed date, when the Allocated Property would be sold and Mr and Mrs P would receive at minimum the purchase price back and likely an additional profit proportionate to their fraction of the property.

Mr and Mrs P say that they have a claim against the Supplier in respect 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 P.

(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 P says 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:

2. 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').
3. Mr and Mrs P were pressured into purchasing Fractional Club membership by the Supplier.
4. The contractual terms setting out (i) the duration of their Fractional Club membership and/or (ii) the obligation to pay annual management charges for the duration of their membership were unfair contract terms under the Unfair Terms in Consumer Contracts 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. The Lender didn't carry out an appropriate creditworthiness assessment.
7. Mr and Mrs P were given the impression that they had to take the loan to make the purchase.
8. The Supplier failed to provide key information necessary for Mr and Mrs P to make an informed decision regarding their purchase which in breach of Regulation 12 of the Timeshare Regulations.
9. Mr and Mrs P were not informed that the Lender would pay the Supplier a commission in relation to the Credit Agreement.

The Lender didn't respond to the Letter of Complaint, so the PR, on behalf of Mr and Mrs P, referred the complaint to the Financial Ombudsman Service. It was assessed by one of our Investigators who, having considered the information on file, upheld the complaint on its merits.

The Investigator thought that the Supplier had marketed and sold Fractional Club membership as an investment to Mr and Mrs P 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 P was rendered unfair to them for the purposes of section 140A of the CCA.

The Lender disagreed with the Investigator's assessment and asked for an Ombudsman's decision – which is why it was passed to me. The Lender's reasons for this were:

- The Letter of Complaint did not include Mr and Mrs P's Client Statement, which is unsigned and undated and was not provided to the Lender until after our Investigator issued their assessment.
- The Lender questions when the Client Statement was written and how much influence the PR had on what it says.
- The allegation of Fractional Club membership being sold as an investment in the Client Statement is not credible because it is unclear, generic, lacks unique detail, omits some of their timeshare purchases, and includes inaccuracies in terms of how many and what types of timeshare purchases were made, when they were purchased and how much was paid.
- The Supplier's notes from the Time of Sale do not suggest Fractional Club membership was sold as an investment to Mr and Mrs P.
- The documents provided to Mr and Mrs P at the Time of Sale say that:
 - "you should not purchase [the Supplier's] fractional points as an investment in real estate", and
 - "we understand that the purchase of our ... fractional points is an investment in our future holidays, and that it should not be regarded as a property or financial investment. We recognize that the sale price achieved on the sale of the property in the owners club... will depend on market conditions at that time, that property prices can go down as well as up and that there is no guarantee as to the eventual sale price of the property."
- Mr and Mrs P took 12 holidays using their Fractional Points between November 2014 and November 2017, indicating they had an interest in holidays.

In November 2024, the PR wrote to us and suggested that any settlement in this case should include a payment for distress and inconvenience that Mr and Mrs P have experienced.

I issued a provisional decision on 11 July 2025 ('Provisional Decision 1'), explaining that I was planning to uphold this complaint. Unfortunately, in doing so I referred to some evidence which was not relevant to this complaint. So, I reviewed the complaint again, looking at the relevant evidence (including information about the Supplier's sales process provided during

the course of the Financial Ombudsman Service's work on timeshare complaints) and considering the responses received to Provisional Decision 1.

In response to Provisional Decision 1, the Lender and Supplier also made the following new points (as well as repeating others from its earlier response to the complaint and Investigator's assessment):

- The Lender says I should not rely on the Client Statement in this case because it is unreliable and lacks credibility due to the following:
 - Mr and Mrs P did not enquire about what would happen to their Fractional Club membership and any potential money they would make from it. The Lender alleges that Mr and Mrs P were likely presented with an opportunity to obtain some redress or recoup monies and so a generic claim was made.
 - The PR has said it did not have the "financial evidence" to make the claim until 2021. The Lender asks how Mr and Mrs P could recall so much detail in the Client Statement if they did not have all the information until 2021. And concludes that the Client Statement was altered or amended once that information was received.
 - The Lender points to another complaint (from a different customer but the same PR), where it was found that a client statement had been amended later to include an allegation that Fractional Club membership had been sold as an investment, but this had not been disclosed by the consumer or the PR. The Lender asked that I therefore challenge the veracity of the Client Statement in this case by obtaining evidence of when the PDF version of the Client Statement was created and when the Client Statement was sent to Mr and Mrs P.
 - The Allegation that Fractional Club membership was sold as an investment lacks detail and is generic – with no information about the likely return or mechanism for how the agreement works. The Lender says that this is because the recollection is incorrect and that references to Mr and Mrs P being able to sell may be referring to the timeshare resale market rather than the fractional element of the product.
- The documents from the Time of Sale are more reliable reflection of what happened than the Client Statement.
- The Lender says I've conflated the meaning of the return, where a "return on investment" can be understood to be a measure of profit on the original investment, whereas "some money being returned" does not suggest any profit. And that if Mr and Mrs P understood Fractional Club membership to be an investment they would have been informed of the return they would receive.
- The Lender has made comments about its interpretation of the definition of "investment" and how to determine whether there was an unfair relationship due to any breach of Regulation 14(3).
- The Supplier asks how the Client Statement could have been completed in 2017 when Mr and Mrs P did not sign a mandate with the PR authorising them to act on their behalf in this claim/complaint until 2021. And how it could include details of what they paid for various timeshare purchases if they did not have "financial information" available until 2021.

- The Supplier says that the PR should confirm if and when any amendments to the Client Statement were made and what they were, when the PDF version of the Client Statement was created and the original version deleted, and that the PR should have a call recording of the discussion that led to the Client Statement being written – in accordance with the Financial Conduct Authority (the ‘FCA’) Handbook Rule CMCOB 2.3, given the PR is regulated by the FCA.

On 28 August 2025, I issued a second provisional decision (‘Provisional Decision 2’). A copy of this is included below in the section ‘What I’ve decided – and why’, and this forms part of my final decision.

In response to Provisional Decision 2, the Lender responded to make the following additional points:

- In relation to the Client Statement I should have asked the PR to confirm:
 - a) When the word version of the Client Statement was created and when was it deleted;
 - b) Whether the word version of the Client Statement can be recovered;
 - c) On what date was the PDF version of the Client Statement created; and
 - d) Whether the PR has any other contemporaneous documents/records which evidence the date of creation.

Below are additional information I asked the PR to provide (along with its answers), bearing in mind the PR had said it no longer has a copy of the Client Statement other than the PDF version provided to us (my understanding from that being that it would be unlikely to be able to provide the information the Lender seeks):

- Confirm when the PDF version (as opposed to the original Word version) of the Client Statement was created (with evidence if available, or if unknown and/or unavailable please confirm this),
 - a) *“Unknown – previous staff member who converted to PDF, no longer works with our company, therefore, unable to answer. The termination file is also no longer available due to GDPR and being over 6 years.”*
- Confirm when the original word-processed version of the Client Statement was deleted (with evidence if available, or if unknown and/or unavailable please confirm this),
 - a) *“Unknown – previous staff member who converted to PDF, no longer works with our company, therefore, unable to answer. The termination file is also no longer available due to GDPR and being over 6 years.”*
- Confirm when the Client Statement was sent to Mr and Mrs P to be checked (with evidence if available, or if unknown and/or unavailable please confirm this).
 - a) *“This would have been sent to client when the statement was originally taken in 2017.”*

- Provide a copy of Mr and Mrs P’s response approving the draft Client Statement (such as their letter, email, or a call note/recording – if not available please confirm this)
 - a) *“The signed questions from our client confirmed this is an accurate reflection of what was said in 2017. This was not part of the process in 2017 to get the client to sign the statement. However, due to the time that has lapsed, the termination file is no longer available due to GDPR.”*
- If the Client Statement was amended, the date of amendment, what amendments were made and why (if unknown please confirm this).
 - a) *“Unknown, due to the time that has lapsed, the termination file is no longer available due to GDPR.”*

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.

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.

Having done that, I currently think that this complaint should be upheld because the Supplier breached Regulation 14(3) of the Timeshare Regulations by marketing and/or selling Fractional Club membership to Mr and Mrs P 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.

However, 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, while I recognise that there are a number of aspects to Mr and Mrs P complaint, it isn’t necessary to make formal findings on all of them. This includes the allegations that the Supplier misrepresented Fractional Club membership to Mr and Mrs P because, even if those aspects of the complaint ought to succeed, the redress I’m currently proposing puts Mr and Mrs P in the same or a better position than they would be if the redress was limited to misrepresentation.

Below is a copy of my findings as set out in Provisional Decision 2:

START OF COPY OF PROVISIONAL FINDINGS

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 P 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.
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 P and the Lender.

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

The Lender does not dispute, and I am satisfied, that Mr and Mrs P'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 Fractional Club membership as an investment. This is what the provision said at the Time of Sale:

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

But Mr and Mrs P say that the Supplier did exactly that at the Time of Sale – saying the following in their Client Statement:

"On 18 October 2014, we were on holiday in Lanzarote in Jardin de Sol. We were invited to a quick update meeting however this ended up being a really intense sales presentation that lasted about three or four hours. It started in the afternoon and by the end of the day, we were the only people left in the whole building with the sales reps, and the sales rep was actually locking up around us as we were going. I think the presentation lasted probably about four hours because it was about 7 o'clock at night when we finally got out.

During this presentation, they sold us something called fractional points. They told us that if we bought fractions then we would be able to sell it at the end of the fractional period. This appealed to us because they implied that the other points couldn't be sold and that there was no specific end date for them and that they would just carry on forever, whilst the fractional ones would stop.

We couldn't afford to exchange all of them at the time so we only exchanged some of them for 6,000 fractional points.

They told us that this would give us a guaranteed end date and that we would make money on it. They told us it was an investment. They told us that once we

sold it, we would make money on it and that we would essentially cover our costs and actually make a profit.”

[my emphasis]

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

- 1) They were told by the supplier that the benefits of Fractional Club membership compared to European Collection points were that it had an end date and could be sold.
- 2) They were told that it was an investment, they would make money on it and that they would make a profit.

The term “investment” is not defined in the Timeshare Regulations. In *Shawbrook & BPF v FOS*¹, 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. In my opinion, Mr and Mrs P’s recollections of what they were told about Fractional Club membership match this definition.

Mr and Mrs P’s share in the Allocated Property could 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. 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 P 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, that is, the Supplier 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.

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 P, 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 Fractional Club membership was not sold to Mr and Mrs P as an investment.

However, weighing up what happened in practice is, in my view, rarely as simple as looking at the contemporaneous paperwork. I have to consider all of the evidence, including Mr and Mrs P’s recollections of the sale.

¹ 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)

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 P 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 Fractional Club membership

During the course of the Financial Ombudsman Service's work on complaints about timeshares, the Supplier has provided various pieces of evidence to illustrate its policies and procedures when it came to selling Fractional Club membership. This shows the Supplier took steps to avoid breaching Regulation 14(3) when selling fractional timeshares such as Fractional Club membership.

The Policy and Procedure (sales misrepresentation) document provided to us included the following:

"[The Supplier] strictly prohibits any forms of Misrepresentation. In this respect, [the Supplier] specifically stresses the importance of representing the [Supplier's] product in line with the following guidelines:

- *[The Supplier] does not represent vacation ownership as an investment.*

...

- *With regards to the presentation of the Fractional product:*

- o *Sales Team members will not represent the Fractional product as an investment*

- o *Sales Team members will not discuss any predictions with regards to the residual value."*

The Policy and Procedure (sales misrepresentation) document went on to say that:

"non compliance of the rules established herein, will lead to the adoption of the relevant disciplinary actions ... including the automatic extinction of the employment relationship by means of a dismissal."

The Supplier has provided the Policy and Procedure (sales misrepresentation) documents signed by the salesperson and sales manager involved in Mr and Mrs P's sale. I can see that they would have signed the document under the statement that:

"I hereby acknowledge receipt of the present Misrepresentation [Standard Operating Procedure] ... as detailed above."

The Supplier has also provided a copy of its Training Manual, which states on page 53:

“The basis of both products is centered on the experiences clients will enjoy when travelling, neither product is an investment type product and as such it is forbidden when selling to our guests to discuss eventual values or returns.”

[emphasis in original]

While this forbids discussion of eventual values or returns it does not forbid describing the product in such a way that might imply it is nevertheless an investment. Nor does it mention that the reason for saying this is because the Timeshare Regulations prohibit the sale or marketing of a timeshare as an investment.

The Training Manual includes an exercise on page 54 that asks the question:

“Why do you think it is important never to present the Fractional ownership club as an investment?”

This question does suggest that salespeople should not present Fractional timeshares as an investment. But no examples are given in terms of what answers are to be expected from trainees. Again, there is no mention of the Timeshare Regulations, nor anything that clearly explains what would constitute a breach of Regulation 14(3).

Looking at these documents, I am satisfied that the Supplier took steps to try and prevent a breach of Regulation 14(3) by its salespeople when selling Fractional Timeshares like Fractional Club membership. And that these steps will have gone some way to reducing the risk of breaches occurring. But the materials are not as explicit as they could be in making salespeople aware of the prohibition in Regulation 14(3), which they do not explicitly refer to.

So, it is not clear to me that a salesperson would've understood why they should not present a fractional timeshare as an investment (the above question is not answered in the Training Manual). Nor that the concept of an investment was clearly defined nor clear guidance provided on what was and was not acceptable.

For example, there are no sales scripts or prescribed wordings that limit how a salesperson could describe a fractional timeshare and specifically the right to a share in the net sale proceeds of the Allocated Property. Nor is there anything that sets out what a salesperson should do if a prospective customer does end up with the impression that Fractional Club membership is an investment (in that they could make a financial gain or profit from it).

In *Shawbrook & BPF v FOS* the judge acknowledged the difficulty in selling a fractional timeshare without breaching Regulation 14(3), where he said at 77:

“I endorse the observation made by Mr Jaffey KC, Counsel for BPF, that, whatever the position in principle, it is apparently a major challenge in practice for timeshare companies to market fractional ownership timeshares consistently with Reg.14(3) ... Getting the governance principles and paperwork right may not be quite enough.”

The documents referred to above (and the responses to Provisional Decision 1) suggest to me that the Supplier may have taken too narrow a view of what constituted selling or marketing a timeshare as an investment (a view which the Lender appears to share). I say this because these documents focus on not presenting the fractional timeshare as an investment in the context of not discussing the residual value of the Allocated Property or the eventual values or returns a customer might receive. I think this left open the possibility that a salesperson might engage in other discussions about this benefit which could cross the

line into breaching Regulation 14(3) – even if that was not the intention of the salesperson or the Supplier.

In my opinion, merely suggesting or implying that a customer might make a financial gain (that is, potentially get back more than they paid for Fractional Club membership) would be enough to breach the prohibition in Regulation 14(3) – even if that financial gain was not quantified.

So, I am not persuaded that these documents are sufficient for me to conclude that it is impossible, implausible or inherently unlikely that Fractional Club membership could have been sold or marketed as an investment at the Time of Sale. That makes it important to consider the evidence from the Time of Sale, including the circumstances of the sale, alongside Mr and Mrs P's recollections of what happened.

Mr and Mrs P's recollections are the only evidence available that is specific to the sale from someone who was there. And while the sales documents do reflect the Supplier's intention to comply with Regulation 14(3), in my opinion the sales documents in themselves do not guarantee that Regulation 14(3) was not breached. Those documents were provided to Mr and Mrs P after they had agreed in principle to make the purchase. So, the disclaimers and statements contained therein may not have been enough to prompt Mr and Mrs P to question what they had been told if that was different to what was shown in the documents.

I am not suggesting that there was a systemic issue that meant Fractional Club membership was sold by the Supplier in breach of Regulation 14(3) in every case. Indeed, I accept that a fractional timeshare (including the Fractional Club membership in question) could have been sold without breaching Regulation 14(3). But my decision is specific to the sale of Fractional Club membership to Mr and Mrs P at the Time of Sale.

The Lender's concerns about Mr and Mrs P's Client Statement

I note the Lender's concerns about the Client Statement. Because of this I queried with Mr and Mrs P when and how the statement was written. They confirmed the Client Statement was taken over the phone and written down by the PR on 18 September 2017, and that it accurately reflects their recollections from the Time of Sale.

This is in line with my understanding of how the PR took client statements at the time. And that these were done initially for the purposes of relinquishing the timeshare, before later being used to inform a claim against the Lender – which the PR may not have made until Mr and Mrs P provided documentary evidence such as the Purchase Agreement and Credit Agreement.

With this in mind, it does not seem particularly suspicious to me that Mr and Mrs P recalled in 2017 (not always entirely accurately) some of the details of their timeshare purchases through the years. I do not think it indicates that these details were added later. If that were the case I would not expect there to be any errors if the PR, as the Lender and Supplier imply, had added that information to the Client Statement after receiving the relevant "financial information".

The Supplier suggests that the PR should have a recording of the call which resulted in the Client Statement being written, given the provisions in CMCOB². But the FCA only took over regulation of claims management companies in April 2019 – sometime after the phone call in question. So, the quoted CMCOB rule did not apply at the time the Client Statement was

² The Financial Conduct Authority ('FCA')'s Claims Management Conduct of Business Sourcebook, which formed part of the FCA Handbook since April 2019.

taken. And there was no similar requirement under the previous regulator regime of the Claims Management Regulator (part of the Ministry of Justice). The relevant rules in place at the time can be viewed via the National Archive's website³.

I also note that the allegations in the Client Statement are mirrored in the Letter of Complaint. And it seems more likely than not that this is because the Client Statement was written when Mr and Mrs P say it was, and this informed the claim and complaint that was later made to the Lender. While it is possible that the Letter of Complaint was written first, that seems less likely given the available evidence.

I am not persuaded that any omissions or inaccuracy of information about other timeshare purchases (the Lender points to a slight error in what Mr and Mrs P paid for a timeshare in 1995 and the type of timeshare purchased in 2016), or the lack of detail about exactly what was said at the Time of Sale materially undermines Mr and Mrs P's recollections of being told (or being led to believe) that Fractional Club membership was an investment that could lead to them making a profit.

That the Client Statement does not provide details of the value of the return that Mr and Mrs P were told about (beyond that that they could make a profit) is not surprising. As mentioned above, the Supplier's training materials said that it was forbidden to discuss eventual values or returns during the sale. So, in that sense the lack of such detail in the Client Statement is in line with how the Supplier and the Lender say Fractional Club membership was sold. That being the case, I do not think this undermines the credibility of the Client Statement. To suggest it does I think takes too narrow a view of what constitutes marketing or selling a timeshare as an investment.

I note the Lender's comments about another case where the PR may have altered a Client Statement but not mentioned this. I do not think this isolated example suggests there was a systemic issue with the PR doing this. Nor that there is any reason to conclude that a similar thing has happened with Mr and Mrs P's statement.

However, if the PR has any additional evidence in relation to the Client Statement it should provide this when responding to this provisional decision For example if it has evidence of:

- (1) when the PDF version of the Client Statement was created,
- (2) when the original word-processed version of the Client Statement was deleted,
- (3) when the Client Statement was sent to Mr and Mrs P to be checked,
- (4) and their response to this.

Overall, I am not persuaded that there is sufficient reason for me to give little weight to the Client Statement, which is not implausible in what it says about the sale, considering all the other evidence available.

Was the credit relationship between the Lender and Mr and Mrs P 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

³ See below:

<https://webarchive.nationalarchives.gov.uk/ukgwa/20140604112728/https://www.justice.gov.uk/claims-regulation/information-for-businesses/conduct-of-business>

credit relationship between Mr and Mrs P 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 it 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 P 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.

The circumstances of the sale

As mentioned above, Mr and Mrs P had 18,000 European Collection Points prior to entering the Purchase Agreement. And they only traded in 6,000 of those points to Fractional Points at the Time of Sale. They paid a significant sum to do so.

The benefits of Fractional Points matched those of European Collection Points (for example they had the same value when it came to purchasing holidays), except two benefits highlighted to Mr and Mrs P by the Supplier at the Time of Sale – a shorter membership term and a share in the net sale proceeds of the Allocated Property at the end of that membership term.

But Mr and Mrs P retained 12,000 European Collection Points after entering the Purchase Agreement. So, although their Fractional Club membership would end after its shorter membership term, they would still be tied into their European Collection Points, which would continue until 2054. So, the benefit of a shorter term was somewhat limited in Mr and Mrs P's circumstances.

I note that the Lender has noted in its consideration of the complaint that:

- *“As they did not trade in all their [European Collection] points they did not gain a reduced term.”*
- *“Was the reduced term a material benefit? (If it is stated as a reason for the fractional purchase, would the customer's circumstances entitle them to exit the previous membership without the need to upgrade?) Yes No*

As the customer traded in only part of their [European Collection] points they still maintained their non-fractional contract, so they have not gained a reduced term.”

This appears to acknowledge that it is unlikely that Mr and Mrs P entered the Purchase Agreement solely for the benefit of a reduced term, given such benefit was not considered by the Lender to be material. Indeed, the Lender and Supplier have not responded to this point following Provisional Decision 1.

It is not disputed that Mr and Mrs P were interested in taking holidays. But they did not gain any additional holiday rights as a part of the purchase. So, it would be implausible that the purchase was motivated by a desire to meet their future holiday needs (something the Lender has suggested was the case when responding to Provisional Decision 1) – since

those needs would've been met (and for longer) by the existing 6,000 European Collection Points that Mr and Mrs P traded in.

That appears to leave Mr and Mrs P gaining a share in the net sale proceeds of the Allocated Property as the only real reason for entering the Purchase Agreement. And it is difficult for me to conclude that Mr and Mrs P would have thought this worthwhile if they did not hold out the hope or expectation that this would lead to them making a profit (that is, that the purchase was an investment as defined above). In fact, given the evidence, I have been unable to identify (and the Lender and Supplier have not put forward) another plausible reason why they would've entered into the Purchase Agreement.

With that being the case, I think that the prospect of a financial gain from Fractional Club membership was an important and motivating factor when Mr and Mrs P decided to go ahead with their purchase. Mr and Mrs P say (plausibly and persuasively in my view given all the evidence) that Fractional Club membership was marketed and sold to them at the Time of Sale as an investment. On the balance of probabilities, I think their purchase was motivated by their share in the Allocated Property and the possibility of a profit given that share was one of the defining features of membership that marked it apart from their existing European Collection membership – and seemingly the only significant benefit they were gaining by the purchase. And with that being the case, I think the Supplier's breach of Regulation 14(3) was material to the decision they ultimately made.

There is no indication that Mr and Mrs P would have pressed ahead with the purchase had the Supplier not led them to believe that Fractional Club membership was an appealing investment opportunity. And as they faced the prospect of borrowing and repaying a substantial sum of money, 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.

Distress and inconvenience

The PR has suggested that Mr and Mrs P should receive some compensation for distress and inconvenience.

When making such awards, I must consider the impact on Mr and Mrs P and I cannot make them to fine or penalise a business. The PR has not set out what distress and inconvenience has been experienced by Mr and Mrs P that the Lender would be responsible for. And that being the case, I see no reason to award compensation for distress and inconvenience in this case.

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 P 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.

END OF COPY OF PROVISIONAL FINDINGS

Additional findings

I've considered the Lender's response to Provisional Decision 2 (including the Supplier's comments), as well as the PR's comments in response to my queries about the Client Statement. I acknowledge and have thought about the Lender's concerns in this regard. But I am not persuaded to depart from my findings set out above.

Ideally the PR would have clear records showing when the Client Statement was created and amended (if applicable) so there would be no uncertainty about this. But I do not think the lack of such evidence is fatal to Mr and Mrs P's complaint.

The Lender's and the Supplier's comments and suspicions do not lead me to conclude that the Client Statement cannot be relied on as evidence in this case (or that it should be given little or no weight when making my decision). I am mindful that Mr and Mrs P have confirmed that the statement does accurately reflect what they recall of what happened at the Time of Sale. And their recollection is not at odds with the circumstances of the sale – where they exchanged 6,000 European Collection points for 6,000 Fractional Points and paid extra for this.

Other than the reasons given by Mr and Mrs P (that they saw it as an investment which could make them a profit and the shorter membership term) I cannot see any other plausible explanation for their decision to enter into the Purchase Agreement. As mentioned above, the shorter membership term was of limited benefit given Mr and Mrs P retained a significant number of European Collection Points following the purchase. They gained no additional holiday rights or other benefits that might have justified their additional outlay. And that leaves their share in the Allocated Property as the most significant benefit of the purchase.

So, while the shorter membership term may have been a minor factor in Mr and Mrs P's decision to purchase, I think that Fractional Club membership being an investment (as defined) was likely a major factor, and that this was material to their decision. As such, I have decided to uphold this complaint. On the balance of probabilities and in light of the available evidence, I think the Supplier breached Regulation 14(3) of the Timeshare Regulations at the Time of Sale, this was material to Mr and Mrs P's decision to enter into the Purchase Agreement and Credit Agreement, and this created an unfair relationship between them and the Lender.

Putting things right

Having found that Mr and Mrs P would not have agreed to purchase Fractional Club membership 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 the Consumer 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 Fractional Club membership (i.e., not entered into the Purchase Agreement), and therefore not entered into the Credit Agreement, provided Mr and Mrs P both agree to assign to the Lender their Fractional Points or hold them on trust for the Lender if that can be achieved.

Mr and Mrs P were existing European Collection members when some of the European Collection Points was traded in against the purchase price of Fractional Club membership. Under their European Collection membership, they had 18,000 European Collection Points (of which they retained 12,000 after entering the Purchase Agreement). And, like Fractional Club membership, they had to pay annual management charges as European Collection members. So, had Mr and Mrs P not purchased Fractional Club membership, they would have always been responsible to pay an annual management charge of some sort on the European Collection Points they traded in. With that being the case, any refund of the annual management charges paid by Mr and Mrs P from the Time of Sale as part of their Fractional Club membership should amount only to the difference between those charges and the annual management charges they would have paid as ongoing European Collection members (where the annual management charges were higher as Fractional Club members).

Usually, I would say that the Lender can deduct from the settlement the value of holidays taken using the Fractional Points purchased. But in this case, Mr and Mrs P did not gain any additional points over what they had as European Collection members. This means that if they had not purchased Fractional Club membership, they still would've been able to take the same holidays regardless – using their European Collection Points. So, in this instance, I do not think that the Lender can make any deduction in relation to holidays taken using the Fractional Points.

So, here's what I think needs to be done to compensate Mr and Mrs P – whether or not a court would award such compensation:

- (1) The Lender should refund Mr and Mrs P'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 difference between Mr and Mrs P's Fractional Club annual management charges paid after the Time of Sale and what their European Collection annual management charges would have been had they not purchased Fractional Club membership (where the Fractional Club annual management charges were higher).
 - (3) The Lender can deduct:
 - a. The value of any promotional giveaways that Mr and Mrs P used or took advantage of.
- (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 P's credit files in connection with the Credit Agreement reported within six years of this decision.
 - (6) If Mr and Mrs P's Fractional Club membership is still in place at the time of this decision, as long as they both 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 Fractional Club membership.

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

My final decision

For the reasons I've explained, I uphold this complaint. I direct Shawbrook Bank Limited to put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs P and Mr P to accept or reject my decision before 10 November 2025.

Phillip Lai-Fang
Ombudsman