DRN-5820929

The complaint

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

Background to the complaint

Mr and Mrs L first purchased a timeshare from a timeshare provider ('the Supplier) on 13 August 2013, which was funded by a different lender and is not the subject of this complaint.

On 28 July 2014 (the 'Time of Sale 1'), Mr and Mrs L purchased another timeshare (the 'Fractional Club 1') from the Supplier. They entered into an agreement to buy 1,540 fractional points at a cost of £7,679 (the 'Purchase Agreement 1').

Mr and Mrs L paid for their Fractional Club 1 membership by taking finance of £24,048 from the Lender (the 'Credit Agreement 1'), which included an amount to consolidate a previous loan taken in 2013 with another lender.

Fractional Club membership was asset backed – which meant it gave Mr and Mrs L more than just holiday rights. It also included a share in the net sale proceeds of a property named on their Purchase Agreements (the 'Allocated Property') after their membership terms ended.

Finally, on 25 August 2015, they purchased membership of a timeshare (the 'Fractional Club 2') from the Supplier (the 'Time of Sale 2'). They entered into an agreement with the Supplier to buy 2,070 fractional points at a cost of £8,663 (the 'Purchase Agreement 2').

They paid for their Fractional Club 2 membership by taking finance of £33,164 from the lender (the 'Credit Agreement 2'), which also included the consolidation of the loan taken the previous year.

Mr and Mrs L – using a professional representative (the 'PR') – wrote to the Lender on 13 September 2018 (the 'Letter of Complaint') to complain about 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, and the decision to lend being irresponsible because (1) the Lender did not carry out the right creditworthiness assessment and (2) the money lent to them under the Credit Agreement was unaffordable for them.

Upon referral to this service, the PR's Letter of Complaint only mentioned the Fractional Club 2 sale. This was because the PR had raised a complaint about the Fractional Club 1 sale to the wrong lender – and in turn, referred separately that complaint about the incorrect respondent. Shawbrook Bank has since had the opportunity to review and issue its response to complaint about the Fractional Club 1 sale, and it has agreed to us considering both purchases together as a single case.

<u>Section 140A of the CCA: the Lender's participation in an unfair credit relationship</u>

The Letter of Complaint sets out several reasons why Mr and Mrs L 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 purchasing Fractional Club membership by the Supplier.
2. The decision to lend was irresponsible because the Lender didn't carry out the right creditworthiness assessment.
3. The broker did not advise them that commission would be paid as part of the transaction.
4. The Fractional Club was misrepresented to them for the following reasons:
    a. They were promised "excellent availability", and this included during the school holidays, however this was not easy to achieve.
    b. Booking holidays would be easy, and the accommodation would be exclusive, but this was not the case.
    c. The purchase was an investment in property and would be sold in 19 years for a profit, but this was not true, and the contract could run "indefinitely".

The Lender dealt with Mr and Mrs L's concerns as a complaint and issued its final response letter to the complaint about the Fractional Club 2 sale on 13 November 2018, rejecting it on every ground. (It later issued the same response to the complaint about the Fractional Club 1 sale).

Mr and Mrs L then referred the complaint to the Financial Ombudsman Service. It was assessed by an Investigator who, having considered the information on file, upheld the complaint on its merits.

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

I considered the matter and issued a provisional decision (the 'PD') dated 21 August 2025. In that decision, I said:

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

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

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

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

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

Mr and Mrs L say that the credit relationships between them and the Lender were unfair under Section 140A of the CCA, when looking at all the circumstances of the case, including parts of the Supplier's sales process at the Times of Sale that they have concerns about. So, I will consider whether the credit relationships between Mr and Mrs L and the Lender were unfair.

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

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

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

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

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

"[Section] 56 provides that [when] antecedent negotiations for a debtor-creditor-supplier agreement are conducted by a credit-broker or the supplier, the negotiations are "deemed to be conducted by the negotiator in the capacity of agent of the creditor as well as in his actual capacity". The result is that the debtor's statutory rights of withdrawal from prospective agreements, cancellation and rescission may arise on account of the conduct of the negotiator whether or not he was the creditor's agent.' […] Sections 56 and 140A(3) provide for a deemed agency, even in a case where there is no actual one. […] These provisions are there because without them the creditor's responsibility would be engaged only by its own acts or omissions or those of its agents."

And this was recognised by Mrs Justice Collins Rice in Shawbrook & BPF v FOS at paragraph 135:

"By virtue of the deemed agency provision of s.56, therefore, acts or omissions 'by or on behalf of' the bank within s.140A(1)(c) may include acts or omissions of the timeshare company in 'antecedent negotiations' with the consumer".

In the case of Scotland & Reast, the Court of Appeal said, at paragraph 56, that the effect of Section 56(2) of the CCA meant that "negotiations are deemed to have been conducted by the negotiator as agent for the creditor, and that is so irrespective of what the position would have been at common law" before going on to say the following in paragraph 74:

"[...] there is nothing in the wording of s.56(2) to suggest any legislative intent to limit its application so as to exclude s.140A. Moreover, the words in s.140A(1)(c) "any other thing done (or not done) by, or on behalf of, the creditor" are entirely apposite to include antecedent negotiations falling within the scope of s.56(1)(c) and which are deemed by s.56(2) to have been conducted by the supplier as agent of the creditor. Indeed the purpose of s.56(2) is to render the creditor responsible for such statements made by the negotiator and so it seems to me wholly consistent with the scheme of the Act that, where appropriate, they should be taken into account in assessing whether the relationship between the creditor and the debtor is unfair."[1]

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

However, an assessment of unfairness under Section 140A isn't limited to what happened immediately before or at the time a credit agreement and related agreement were entered into. The High Court held in Patel (which was recently approved by the Supreme Court in the case of Smith), that determining whether or not the relationship complained of was unfair had to be made "having regard to the entirety of the relationship and all potentially relevant matters up to the time of making the determination" – which was the date of the trial in the case of an existing credit relationship or otherwise the date the credit relationship ended.

The breadth of the unfair relationship test under Section 140A, therefore, is stark. But it isn't a right afforded to a debtor simply because of a breach of a legal or equitable duty. As the Supreme Court said in Plevin (at paragraph 17):

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

Instead, it was said by the Supreme Court in Plevin that the protection afforded to debtors by Section 140A is the consequence of all of the relevant facts.

I have considered the entirety of the credit relationships between Mr and Mrs L and the Lender along with all of the circumstances of the complaint and I do not think the credit relationships between them were 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 Times of Sale – which includes training material that I think is likely to be relevant to the sales; and*
2. *The provision of information by the Supplier at the Times 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 Times of Sale;*
4. *The inherent probabilities of the sales given the circumstances.*

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

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[1] The Court of Appeal's decision in *Scotland* was recently followed in *Smith*.

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

Mr and Mrs L'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.

They include the allegation that the Supplier misrepresented the Fractional Club 1 and 2 memberships to Mr and Mrs L. I have thought about what they say in their testimony, alongside the relevant documents from the Times of Sale.

Regarding the Fractional Club 1 membership, Mr and Mrs L say:

"The representatives were persistent that we took the agreement out that day. The representatives advised us that there would be excellent availability. [Mrs L] is a teacher and she needs to holiday within the school holidays and we were advised that this would be fine. However, it was incredibly difficult to book holidays during the school holidays and, in particular, we have never been to Italy (the place we most wanted to visit). We also need to book in advance to get cheaper flights since they are already expensive in the school holiday[s] but this was incredibly difficult as they only put resorts up for booking 5-6 weeks in advance. We had been advised that booking would have been much easier than this and the representatives were made well aware of our particular needs. The representatives also advised us that the purchase was an investment in property and would be sold on in 19 years for a profit. We were not advised that the contract could persist indefinitely".

Regarding the Fractional Club 2 membership, Mr and Mrs L say:

"The representatives were persistent that we took the agreement out that day. The representatives advised us that there would be better availability. [Mrs L] is a teacher but we found it incredibly difficult to book holidays during the school holidays and, in particular, we have never been to Italy (the place we most wanted to visit). The representatives advised us that more points would fix it but it did not. The representatives also advised us that the purchase was an investment in property and would be sold on in 19 years for a profit. We were advised that we would make more profit if we bought more points. We were not advised that the contract could persist indefinitely".

The Lender has provided a response from the Supplier, who says that Mr and Mrs L could have booked their accommodation up to 24 months in advance. It says Mr and Mrs L never raised any concerns with it about securing accommodation. And it provided a list of reservations they made using both their Fractional Club 1 and 2 memberships, which shows that they took holidays in August every year from 2015 to 2018 and cancelled further reservations in the even-numbered years that followed.

I can see Mr and Mrs L's Fractional Club 2 membership provided them with one week's accommodation in a particular suite at a particular resort, during week 33, on even-numbered years. This week falls around the middle of August, which I am aware falls within the school holiday period where Mr and Mrs L live. Further, the Member's Declaration, which they signed at the Time of Sale, says:

"We understand that we have priority to reserve the above listed weekly period for our holiday use up to 3 months prior to the week number allocated and after that the weekly period for that year will be automatically converted to Points for us to use".

So, if Mr and Mrs L opted not to book the suite, they would receive the points assigned to their rights, and could have used these to book other accommodation. I am unsure why they felt it was difficult to book holidays during the school holidays as they had the exclusive right

to the suite and the Supplier says they stayed there in both 2016 and 2018. I am unsure why they say resorts were only put up for booking five or six weeks in advance, given what I have said about the way the booking worked. Mr and Mrs L suggest that they expected to be able to use accommodation in Italy and raised this point in identical terms about both sales. But they have not explained how they were led to believe they could obtain accommodation in Italy using the Fractional Club memberships, or that they tried, unsuccessfully, to use it for that purpose. Therefore, I am not persuaded the Supplier made a false statement of existing fact that amounted to misrepresentation at the Time of Sale 1 or 2.

The PR says that the right affordability checks weren't carried out before the Lender lent to Mr and Mrs L. 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 L 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 the Mr and Mrs L. If there is any further information on this (or any other points raised in this provisional decision) that Mr and Mrs L wish to provide, I would invite them to do so in response to this provisional decision.

Mr and Mrs L 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. They 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. The Lender says they attended a further three presentations and did not make a purchase at these times, which to me suggests that they knew they could turn down the opportunity to make the purchases. And with all of that being the case, there's insufficient evidence to demonstrate that Mr and Mrs L made the decision to purchase Fractional Club membership because their ability to exercise that choice was significantly impaired by pressure from the Supplier.

I'm not persuaded, therefore, that Mr and Mrs L's credit relationships with the Lender were 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 memberships were marketed and sold to them as an investment in breach of prohibition against selling timeshares in that way.

<u>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?</u>

The Lender does not dispute, and I am satisfied, that Mr and Mrs L'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 the PR says that the Supplier did exactly that at the Time of Sale 1 and 2. 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 and Mrs L's shares in the Allocated Properties 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 the Fractional Club memberships 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 memberships were marketed or sold to Mr and Mrs L 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.

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 L, 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 L as an investment. For example, in the Member's Declaration in the Fractional Club 1 paperwork, it says:

"We understand that the purchase of our Fraction is for the primary purpose of holidays and is not specifically for direct purposes of a trade in and that [the Supplier] makes no representation as to the future price or value of the Fraction".

Similarly, the Member's Declaration in the Fractional Club 2 paperwork says:

"We understand that the purchase of our Fractional Rights is for the primary purpose of holidays and is not specifically for direct purposes of a trade in and that [the Supplier] makes no representation as to the future price or value of the Fractional Rights".

Another document, titled "Fractionals at [the Supplier] Signature Collection Information Statement" contains the following disclaimer:

"This is a holiday product and there should be no expectation of financial gain in respect of the Suites" (page 2).

"The Vendor, Manager and the Trustee are unable to give any guarantees or the ultimate sales price as this depends on many factors including the state of the property market, supply and demand and exchange rates at the time of sale" (page 3).

However, there were other aspects of the Information Statement present in both purchase documents that, in my view, may have given the impression that the Fractional Club membership was to be treated as an investment:

"Investment advice

The Vendor, any sales or marketing agent and the Manager and their related businesses (a) are not licensed investment advisors authorised by the Financial Conduct Authority or any relevant authority to provide investment advice or financial advice; (b) all information has been obtained solely from their own experiences as investors and is provided as general information only and as such it is not intended for use as a source of investment advice and (c) all purchasers are advised to obtain competent advice from legal, accounting and investment advisors to determine their own specific investment needs; (d) no warranty is given as to any future values or returns in respect of any Suite" *(page 8) (emphasis from the document).*

It seems to me that the inclusion of that disclaimer was only necessary if the Supplier was aware that Fractional Club membership ran the risk of being presented as an investment, either in the marketing materials the Supplier produced or orally by its sales staff.

Despite the disclaimers being ambiguous in some areas, I do think the Supplier attempted to specifically avoid giving any future value or estimate of what Mr and Mrs L's return from the sale of the Allocated Properties was likely to be. In fact, the disclaimer on page three of the Information Statement explains why no specific amount could be given. So, although I understand Mr and Mrs L say they were told that "we would make more profit if we bought more points", I cannot say, on balance that this representation was made to them.

With that said, I acknowledge that the Supplier's training material left open the possibility that the sales representative may have positioned Fractional Club membership as an investment. And I accept that it's possible that Fractional Club 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 Fractional Club membership without breaching the relevant prohibition.

However, I don't think it is necessary to make a finding on this point because, as I'll go on to explain, I am not currently persuaded that would make a difference to the outcome in this complaint anyway.

<u>Was the credit relationship between the Lender and Mr and Mrs L 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 and Mrs L 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 and Mrs L, 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.

But I am not currently persuaded that it did. I will explain why.

Looking closely at what Mr and Mrs L say happened during both sales, I note that they do say they were sold the timeshares as investments, saying about Fractional Club 1:

"The representatives also advised us that the purchase was an investment in property and would be sold on in 19 years for a profit. We were not advised that the contract could persist indefinitely".

And Fractional Club 2:

"The representatives also advised us that the purchase was an investment in property and would be sold on in 19 years for a profit. We were advised that we would make more profit if we bought more points. We were not advised that the contract could persist indefinitely."

To me, listing the above phrases, as the PR has done here in its telling of Mr and Mrs L's testimony, without also including the rest of the conversation in which the phrases were used, does not provide me with the necessary colour and context to conclude that these statements were made by the Supplier and relied upon by Mr and Mrs L when they decided to proceed with each purchase. They do not say anything further about how the Fractional Club memberships were marketed and sold to them as an investment. Instead, they say that they were concerned that the contract could persist indefinitely. On my reading of their testimony, they raised the future sale of the Allocated Properties because they were concerned they might not sell, and their liability to pay maintenance fees might not cease. So, I cannot agree that they have shown the prospect of making a profit on the sales of the Allocated Properties was important to their decisions to enter the agreements.

Mr and Mrs L's testimony taken as a whole does go into some more detail about what they say they were told about the holiday rights. For instance, they say (on both occasions) that they were told they would be able to take holidays during the school holiday period, that they wanted to travel to Italy, and that booking the holidays would be easy. Mr and Mrs L's recollections of what they were told about their holiday rights are more detailed and specific to their circumstances than their recollections that the purchases involved an investment in property. So, I think the holiday rights were what ultimately persuaded them to enter the agreement and the issues they faced are what drove them to complain.

On balance, therefore, 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, I am not persuaded that Mr and Mrs L'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). On the contrary, I think the evidence suggests they would have pressed ahead with their purchase for other reasons, 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 and Mrs L and the Lender was unfair to them even if the Supplier had breached Regulation 14(3)."

In conclusion, given the facts and circumstances of this complaint, I was not persuaded that the Lender was party to a credit relationship with Mr and Mrs L under the Credit Agreements that were unfair to them for the purposes of Section 140A of the CCA. And having taken everything into account, I could see no other reason why it would be fair or reasonable to direct the Lender to compensate them.

Following my PD, I also communicated how I was not persuaded that Mr and Mrs L's credit relationship with the Lender was unfair to them for reasons relating to the commission arrangements between it and the Supplier.

The Lender accepted the PD and did not add anything further.

The PR also responded – it did not accept the PD and provided some further comments and evidence it wishes for me to consider.

Having received the relevant responses from both parties, I'm now finalising my 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, in many ways, no different to that shared in several hundred published ombudsman decisions on very similar complaints – which can be found on the Financial Ombudsman Service's website. And with that being the case, it is not necessary to set out that context in detail here. But I would add that 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.

Following the responses from both parties, I've considered the case afresh and having done so, I've reached the same decision as that which I outlined in the PD, for broadly the same reasons.

Again, my role as an Ombudsman isn't to address every single point which has been made to date, but to decide what is fair and reasonable in the circumstances of this complaint. If I haven't commented on, or referred to, something that either party has said, this doesn't mean I haven't considered it.

Rather, I've focused here on addressing what I consider to be the key issues in deciding this complaint and explaining the reasons for reaching my final decision.

The PR's further comments in response to the PD relate to the issue of whether the credit relationship between Mr and Mrs L and the Lender was unfair. In particular, the PR has provided further comments in support of the allegation that the Supplier sold the Fractional Club memberships to Mr and Mrs L as an investment at the Time of Sale 1 and the Time of Sale 2.

As outlined in my PD, the PR originally raised various other points of complaint, all of which I addressed at that time. But it didn't make any further comments in relation to those in their response to my PD. As I haven't been provided with anything more in relation to those other points by either party, I see no reason to change my conclusions in relation to them as set out in my PD. So, I'll focus here on the PR's points raised in response.

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

The PR has requested that it provides me with a sworn affidavit from Mr and Mrs L, and it has requested that I conduct an oral hearing to allow them to present their case. Oral hearings are something that I can direct to happen under DISP 3.5.5. However, the Financial Ombudsman Service is set up to decide complaints informally and it is for me as the decision maker to determine what evidence I think I need to determine what is a fair and reasonable outcome to a complaint. Having considered everything, I do not think I need to hold an oral hearing to fairly determine this complaint.

This is because both parties have already provided lengthy submissions. In this case, I have been provided a copy of a statement from the PR made on behalf of Mr and Mrs L, a statement from them in their own words in response to the PD, other evidence, including the documents from the sale, and full submissions from the PR and the Lender. I'm satisfied I'm

able to weigh up what Mr and Mrs L said already against the available evidence and arguments to determine what I think happened on the balance of probabilities without the need for an oral hearing. And as it's in everyone's interest to resolve this complaint as soon as possible, to grant a hearing at such a late stage would inevitably prolong the resolution of this case.

I have also considered the PR's suggestion to have Mr and Mrs L provide a sworn affidavit. But I must remind them that, as an ombudsman, I don't have strict evidential requirements. I'm not expected to decide complaints only after receiving sworn evidence. And our jurisdiction is investigative rather than adversarial. I remain of the view that the information we have on file is enough to cover all the issues I need to consider to reach a fair decision. And as I've already invited the PR, and the Lender, to provide me with any further information, and have considered everything on file, including the specific points raised by the PR as part of its request, I'm of the view that a hearing request and/or sworn affidavits aren't required.

As I explained in my PD, although I found there was a possibility that the Supplier breached Regulation 14(3) at the Times of Sale, I was not satisfied that any such breach was an important factor in their decisions to enter the two agreements. Instead, I thought they provided more detailed and specific testimony about the holiday rights they obtained, and their desire to use the timeshares to take particular holidays. So, I wasn't persuaded that the evidence suggested that Mr and Mrs L purchased the Fractional Club memberships in whole or in part down to any breach of Regulation 14(3). And as I already said in my PD, it seems from what Mr and Mrs L say, that they were persuaded to enter the agreements in order to gain the holiday accommodation provided to them through the memberships.

The PR provided me with the following statement from Mr and Mrs L in response to my PD:

"Hi and thank you for your phone call regarding our claim. Both [Mrs L] and I were very disappointed with the decision made by the Ombudsman. What we purchased for what price and when is well documented. However the reasons for the purchases don't seem to be very clear.

We were shown a large show apartment in the sales building in Tenerife and were led to believe that we would buy and own a share that could be sold after a period of nineteen years at a predicted profit of at least 20%. At this point we knew that there would be an annual maintenance fee of approximately €900. We also knew that we could purchase a holiday in a similar resort for this price annually so the reason we borrowed money to become members was because we were led to believe that we were investing in bricks and mortar and to quote the salesman "Our first step to owning a Spanish property." We were also driven to another of [the Supplier] resorts nearby and were told that the value of these luxury apartments had "increased considerably over the last few years."

Why would we possibly take out a loan for £24,048 knowing that the same holiday could be purchased for little over £1,000 per week (as advertised on [third-party website]) at the time? So eight years after our last visit to [the Supplier] we are still paying off our loan at £383.22 per month, (£4,598.64 per year) and have nothing to show for it. How is this fair?"

I have thought about what Mr and Mrs L say here. However, with this evidence there is a real risk that their testimony has been coloured by the outcome in *Shawbrook & BPF v FOS* and, in particular, the outcome of my PD. And, on balance, the timing in which this evidence has been provided makes me conclude that I can place little weight on it, particularly as it contains assertions which weren't present in Mr and Mrs L's original statement.

The PR has also reiterated that the judgment handed down in *Shawbrook & BPF v FOS* asserted that the relevant question in this circumstance is whether the breach of regulation 14(3) was a material factor in the decision to purchase, not whether it was the only factor or principal one. It feels that the testimony Mr and Mrs L has provided demonstrates that this was the case. But, as I explained in my provisional decision, I'm not persuaded from the testimony that Mr and Mrs L have adequately demonstrated that the promise of profit was a motivating factor to their decision to move ahead with the purchase – principal or otherwise.

The PR argued that I've been inconsistent with my approach compared to previous decisions issued by the service, and it has provided examples it feels demonstrates this. But my decision is based on consideration of Mr and Mrs L's specific circumstances. Each complaint turns on its own facts; an ombudsman's decision on how one timeshare sale occurred does not determine his, or any other ombudsman's, decisions about the facts of other sales at different times to different purchases.

So, as I said before, even if the Supplier had marketed or sold the memberships as investments in breach of Regulation 14(3) (which I still make no finding on here), I'm not persuaded Mr and Mrs L's decisions to enter into the Purchase Agreements at the Times of Sale were motivated by the prospect of a financial gain. So, I still don't think the credit relationships between Mr and Mrs L and the Lender were unfair to them for this, or any other, reason.

Conclusion

In conclusion, given the facts and circumstances of this complaint, I am not persuaded that the Lender was party to credit relationships with Mr and Mrs L under the Credit Agreements that were 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 set out above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs L to accept or reject my decision before 13 February 2026.

Andrew Anderson
Ombudsman