DRN-5829206

The complaint

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

What happened

In May 2013, Mr and Mrs N purchased a trial membership of a timeshare from a timeshare provider (the 'Supplier'). This purchase isn't the subject of this complaint and is included here for background purposes only.

Then, on 17 June 2014 (the 'Time of Sale'), Mr and Mrs N traded in their trial membership and purchased a full timeshare membership (the 'Balkan Jewel membership'). They entered into an agreement with the Supplier to buy 5,500 fractional points at a cost of £5,700 (the 'Purchase Agreement').

Balkan Jewel membership was asset backed – which meant it gave Mr and Mrs N more than just holiday rights. It also included a share in the net sale proceeds of a property named on their Purchase Agreement (the 'Allocated Property') after their membership term ends.

Mr and Mrs N paid for their Balkan Jewel membership by taking finance of £5,700 from the Lender in both of their names (the 'Credit Agreement'). This loan was paid off on 24 February 2017.

Mr and Mrs N– using a professional representative (the 'PR') – wrote to the Lender on 11 November 2021 (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) <u>Section 75 of the CCA: the Supplier's misrepresentations at the Time of Sale</u>

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

1. told them that Balkan Jewel membership had a guaranteed end date when that was not true.
2. told them that the membership would offer better availability and a higher standard of accommodation.
3. told them that they were being offered a heavily discounted purchase price only available on that day.
4. told them that Balkan Jewel membership was an "investment" when that was not true.

5. told them that the Supplier's holiday resorts were exclusive to its members when that was not true.

Mr and Mrs N say that they have a claim against the Supplier in respect of one or more of the misrepresentations set out above, and therefore, under Section 75 of the CCA, they have a like claim against the Lender, who, with the Supplier, is jointly and severally liable to Mr and Mrs N.

(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 N 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. Balkan Jewel 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').
2. The contractual terms were unfair under the Unfair Terms in Consumer Contracts Regulations 1999 (the 'UTCCR') as the Lender paid the Supplier commission, but this was not disclosed to Mr and Mrs N.
3. They were pressured into purchasing Balkan Jewel membership by the Supplier.
4. The Supplier's sales presentation at the Time of Sale included misleading actions and/or misleading omissions under the Consumer Protection from Unfair Trading Regulations 2008 (the 'CPUT Regulations') as well as a prohibited practices under Schedule 1 of those Regulations.
5. The decision to lend was irresponsible because the Lender didn't carry out the right creditworthiness assessment. And, no comparisons with other loan companies were provided and it wasn't mentioned that they were free to arrange their own finance.
6. The Supplier failed to provide Mr and Mrs N with key information necessary for them to be able to make an informed decision regarding the purchase. In particular, in relation to the annual management charges and the fact that these could increase. They also weren't given an opportunity to read the Purchase Agreement or Credit Agreement.

The Lender acknowledged the complaint, but didn't provide a substantive response to it. So, the PR, on Mr and Mrs N's behalf, 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'). In that decision, I said:

"***Section 75 of the CCA: the Supplier's misrepresentations at the Time of Sale***

The CCA introduced a regime of connected lender liability under section 75 that affords consumers ("debtors") a right of recourse against lenders that provide the finance for the acquisition of goods or services from third-party merchants ("suppliers") in the event that there is an actionable misrepresentation and/or breach of contract by the supplier.

In short, a claim against the Lender under Section 75 essentially mirrors the claim Mr and Mrs N could make against the Supplier.

Certain conditions must be met if the protection afforded to consumers is engaged, including, for instance, the cash price of the purchase and the nature of the arrangements between the parties involved in the transaction.

Further, creditors can reasonably reject Section 75 claims that they're first informed about after the claim has become time-barred under the Limitation Act 1980 (the 'LA'). The reason being, that it wouldn't be fair to expect creditors to look into such claims so long after the liability arose and after a limitation defence would be available in court.

Having considered everything, I think Mr and Mrs N's claim for misrepresentation is likely to have been made too late under the relevant provisions of the LA, which means it would have been fair for the Lender to have turned down their Section 75 claim for this reason.

A claim under Section 75 is a 'like' claim against the creditor. A claim for misrepresentation against the Supplier would ordinarily be made under Section 2(1) of the Misrepresentation Act 1967. And the limitation period to make such a claim expires six years from the date on which the cause of action accrued, as per Section 2 of the LA.

But a claim like this one under Section 75 is also "an action to recover any sum by virtue of any enactment" under Section 9 of the LA. The limitation period under that provision is also six years from the date on which the cause of action accrued.

The date on which the cause of action accrued for the claim was the Time of Sale, which was 17 June 2014. I say this because Mr and Mrs N entered into the membership at that time based on the alleged misrepresentations by the Supplier, which Mr and Mrs N say they relied on. And, as the loan from the Lender was used to finance this membership, it was when Mr and Mrs N entered into the Credit Agreement, on 17 June 2014, that they suffered a loss.

Mr and Mrs N first notified the Lender of their Section 75 claim on 11 November 2021. Since this was more than six years after the Time of Sale, I don't think it was unfair or unreasonable of the Lender to reject Mr and Mrs N's concerns about the Supplier's alleged misrepresentations at the Time of Sale.

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

Mr and Mrs N also say that the credit relationship between them and the Lender was unfair under Section 140A of the CCA, when looking at all the circumstances of the case, including parts of the Supplier's sales process at the Time of Sale that they have concerns about. It is those concerns that I explore here.

I have considered the entirety of the credit relationship between Mr and Mrs N and the Lender along with all of the circumstances of the complaint and I do not 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;*
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; and*
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 N and the Lender.

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

Mr and Mrs N'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 misled Mr and Mrs N and carried on unfair commercial practices which were prohibited under the CPUT Regulations. But given the limited evidence in this complaint, I am not persuaded that anything done or not done by the Supplier was prohibited under the CPUT Regulations.

The PR says that the right checks weren't carried out before the Lender lent to Mr and Mrs N. 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 N was actually unaffordable before also concluding that they lost out as a result and then consider whether the credit relationship with the Lender was unfair to them for this reason. Again, from the information provided, I am not satisfied that the lending was unaffordable for Mr and Mrs N. If there is any further information on this (or any other points raised in this provisional decision) that Mr and Mrs N wish to provide, I would invite them to do so in response to this provisional decision.

Mr and Mrs N also said that no comparisons with other loan companies were provided by the Supplier, and it wasn't mentioned to them that they were free to arrange their own finance. But, I can't see that the Supplier was acting in an advisory capacity in this regard. Further, Mr and Mrs N had already paid for their trial membership the year before using a credit card, so it would seem likely they were already aware at the Time of Sale that they could pay for their purchase using other forms of credit, from other credit providers.

Mr and Mrs N also say that they were pressured by the Supplier into purchasing Balkan Jewel 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 Balkan Jewel 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. And with all of that being the case, there is insufficient evidence to demonstrate that Mr and Mrs N made the decision to purchase Balkan Jewel membership because their ability to exercise that choice was significantly impaired by pressure from the Supplier.

Mr and Mrs N also say the Supplier failed to provide them with key information necessary for them to be able to make an informed decision regarding the purchase. In particular, in relation to the annual management charges and the fact that these could increase. But, in relation to the annual management charges, it seems Mr and Mrs N were likely told about these at the Time of Sale and that these would be payable for the length of the membership term. And, that these could increase over that term.
I say this because the Information Statement provided at the Time of Sale (which Mr and Mrs N signed) explained that members would be required to pay an annual management fee each year, and this would be sent to them by 31 December each year. And, that these charges would be based on the estimated costs per year for each point owned by members and is likely to increase each year. A table was also provided with the details of the total annual management fee payable for 2014 for different levels of points, in both Sterling and Euros. So, while it's possible the Supplier didn't give Mr and Mrs N sufficient information, in good time, regarding the annual management charges in order to satisfy its regulatory responsibilities at the Time of Sale, I haven't seen enough to persuade me that this, alone, rendered Mr and Mrs N's credit relationship with the Lender unfair to them.

They also say weren't given an opportunity to read the Purchase Agreement or Credit Agreement. But, Mr and Mrs N signed both of these documents at the Time of Sale and I don't think it's likely that they did so without any consideration as to what these meant. And, as I've already said, they were also given a 14-day cooling off period in which to consider the documentation. So, I can't see an unfairness here which requires a remedy.

I'm not persuaded, therefore, that Mr and Mrs N's credit relationship with the Lender was rendered unfair to them under Section 140A for any of the reasons above. But there is another reason, perhaps the main reason, why they say their credit relationship with the Lender was unfair to them. And that's the suggestion that Balkan Jewel membership was marketed and sold to them as an investment in breach of prohibition against selling timeshares in that way. This was also the reason the Investigator in this case originally upheld the complaint.

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

The Lender does not dispute, and I am satisfied, that Mr and Mrs N's Balkan Jewel 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 Balkan Jewel 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 PR says that the Supplier did exactly that at the Time of Sale. So, that is what I have considered next.

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

Mr and Mrs N's share in the Allocated Property clearly, in my view, constituted an investment as it offered them the prospect of a financial return – whether or not, like all investments, that was more than what they first put into it. But the fact that Balkan Jewel 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 Balkan Jewel membership. They just regulated how such products were marketed and sold.

To conclude, therefore, that Balkan Jewel membership was marketed or sold to Mr and Mrs N 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 Balkan Jewel membership offered them the prospect of a financial gain (i.e., a profit) given the facts and circumstances of this complaint.

There is competing evidence in this complaint as to whether Balkan Jewel membership was marketed and/or sold by the Supplier at the Time of Sale as an investment in breach of regulation 14(3) of the Timeshare Regulations.

On the one hand, it is clear that the Supplier made efforts to avoid specifically describing Balkan Jewel membership as an 'investment' or quantifying to prospective purchasers, such as Mr and Mrs N, 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 Balkan Jewel membership was not sold to Mr and Mrs N as an investment. So, it's possible that Balkan Jewel membership wasn't marketed or sold to them as an investment in breach of Regulation 14(3).

On the other hand, I've also considered Mr and Mrs N's testimony. The PR didn't initially provide any witness statement to either the Lender or our Service when the complaint was first made. But, they then did subsequently provide one in January 2024. This was not signed but was dated 15 January 2021 and I've seen evidence that it was drafted at that time.

In this statement, insofar as it relates to this Time of Sale, Mr and Mrs N said:

> *"Therefore, at this meeting, we were told that through upgrading to Fractionals, it would be possible to enjoy five-star accommodation at very cheap prices. We were assured that within a number of years, it would be possible to resell these Fractionals for a profit (indeed, 3 years ago, we were assured in Benalmadena, that our timeshare had increased in value to £14,500, and therefore, it would be wise to retain this investment for longer)."*

I also acknowledge 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 Balkan Jewel membership without breaching the relevant prohibition. So, I accept that it's equally possible that Balkan Jewel membership was marketed and sold to Mr and Mrs N as an investment in breach of Regulation 14(3).

However, whether or not there was a breach of the relevant prohibition by the Supplier is not ultimately determinative of the outcome in this complaint for reasons I will come on to shortly. And with that being the case, it is not necessary to make a formal finding on that particular issue for the purposes of this decision.

Was the credit relationship between the Lender and Mr and Mrs N rendered unfair to them?

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.

And in light of what the courts had to say in Carney and Kerrigan, 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 N 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.

Looking at Mr and Mrs N's testimony as a whole, I think it's clear that they purchased their preceding trial membership on the basis of the holidays it could provide. And, they then

purchased full membership at the Time of Sale, having been very happy with the holidays they had enjoyed using their trial membership.

As I outlined in above, I acknowledge that Mr and Mrs N have suggested in their testimony that the Supplier told them that within 'a number of years' it would be possible to 'resell' their membership for a profit. But this only appears to represent what they were potentially told at the Time of Sale.

After outlining what happened at the Time of Sale, Mr and Mrs N have gone on to outline why they're unhappy with the membership now, saying the following:

> *"However, since purchasing this timeshare with [the Supplier], we found that we enjoyed fantastic holidays with our Trial membership, however since purchasing a full Fractional membership, we have found that we have been completely let down by [the Supplier]. We have found that we were never able to book holidays in Greece where we wanted to go and have been told that it would be necessary to book holidays up to 13/14 months in advance which is not practical, and we could never get holidays during school holidays – this is not the flexibility we were promised. We have been informed that it is unlikely that our Fractionals would be likely to ever resell, and the maintenance fees for this timeshare have increased dramatically over the years, which due to working part-time due to covid which has seen a halve in our income, these fees are no longer affordable. We have also found that it is possible to book the same holidays [the Supplier] are offering in Benalmadena through Easy Jet, which is not the exclusivity we were promised. We have also found that we have had to pay extra fees of £120 per holiday, which we have now lost due to covid.*
>
> *Given the above, we request termination of our timeshare contract…"*

So, taking the testimony as a whole, it seems that Mr and Mrs N likely purchased full membership at the Time of Sale based on the holidays it provided, having been happy with these from their trial membership. As they've said, their issues with the timeshare were due to how it functioned as a holiday product, in comparison to their trial membership. For example, they've identified issues with availability and a lack of exclusivity. They've also said that due to changes in their personal circumstances, they can no longer afford the maintenance fees in the way they could initially. And, have suggested that these are the reasons they wanted to relinquish their membership and make a complaint.

I acknowledge that in their testimony, Mr and Mrs N said that in 2018, they were told while on holiday that their timeshare had increased in value and given a specific figure in relation to this. And, that they should therefore retain it, which they did.

I asked the PR if there was any further information Mr and Mrs N could provide in relation to this point. And, they provided the following comments:

> *"We were on holiday in Benalmadena in Spain using our fractional points when the rep approached us at our apartment and invited us for breakfast. After breakfast the rep then took us into the office. We were unhappy with the product and told the rep of this, the rep then told us no, no, no look at how much it has increased in value showed us a slideshow which showed it had increased by £14,500 and told us to keep this as it was gaining value."*

I've considered this, but ultimately I don't think this particularly assists me in understanding what happened at the Time of Sale and what Mr and Mrs N's motivations were at that time, considering this alleged conversation took place around five years after the Time of Sale. Further, it's unclear where exactly the representative they spoke with obtained the figure

they've referred to and how exactly the representative justified or evidenced such a specific figure to them. It's also unclear how the representative would have prepared the slide presentation they've mentioned (with the specific figure, in relation to their membership in particular) in advance of what appears to have been an impromptu meeting. So, this seems inherently unlikely.

On balance, therefore, even if the Supplier had marketed or sold the Balkan Jewel membership as an investment in breach of Regulation 14(3) of the Timeshare Regulations, I am not persuaded that Mr and Mrs N's decision to purchase Balkan Jewel membership at the Time of Sale was motivated by the prospect of a financial gain (i.e., a profit). On the contrary, I think the evidence suggests they would have pressed ahead with their purchase whether or not there had been a breach of Regulation 14(3). And for that reason, I do not think the credit relationship between Mr and Mrs N and the Lender was unfair to them even if the Supplier had breached Regulation 14(3).

Mr and Mrs N's Commission Complaint

I note that one of Mr and Mrs N's other concerns relates to alleged payment of commission by the Lender to the Supplier for acting as a credit broker and arranging the Credit Agreements. The Supreme Court's recent judgment Johnson v FirstRand Bank Ltd, Wrench v FirstRand Bank Ltd and Hopcraft v Close Brothers Ltd [2025] UKSC 33 ('Johnson, Wrench and Hopcraft') clarified the law on payments of commission – albeit in the context of car dealers acting as credit brokers. In my view, the Supreme Court's judgment sets out principles which appear capable of applying to credit brokers other than car dealer–credit brokers. At present, I do not know enough about the relevant arrangements in place at the Time of Sale. So, once I know more, I will finalise my findings on this complaint."

In conclusion, I did not think that the Lender acted unfairly or unreasonably when it dealt with the relevant Section 75 claim, and if I put the issue of commission to one side for the time being, I was not persuaded that the Lender was party to a credit relationship with Mr and Mrs N under the Credit Agreement that was unfair to them for the purposes of Section 140A of the CCA – nor could I see any other reason why it would be fair or reasonable to direct the Lender to compensate them.

Following my provisional decision, I also communicated how I was not persuaded that Mr and Mrs N's credit relationship with the Lender wasn't unfair to them for reasons relating to the commission arrangements between it and the Supplier[1].

The Lender responded to the PD and accepted it. The PR also responded – they did not accept the PD and provided some further comments and evidence they wish to be considered.

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.

[1] The Lender did not respond. The PR did respond and confirmed that they did not wish to challenge my conclusions on this particular point.

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 my provisional findings, 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 in the main relate to the issue of whether the credit relationship between Mr and Mrs N and the Lender was unfair. In particular, the PR has provided further comments in relation to whether the membership was sold to Mr and Mrs N as an investment at the Time of Sale.

As outlined in my PD, the PR originally raised various other points of complaint, all of which I addressed at that time. But they didn't make any further comments in relation to those in their response to my PD. Indeed, they haven't said they disagree with any of my provisional conclusions in relation to those other points. And since 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 Supplier's alleged breach of Regulation 14(3) of the Timeshare Regulations

Included in the PR's response to my PD was an oral hearing request along with the offer to produce sworn affidavits. Oral hearings are something that I can direct 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 statements from Mr and Mrs N, other evidence, including the documents from the sale, and full submissions from PR and Lender to decide what I think was most likely to have happened. I'm satisfied I'm able to weigh up what Mr and Mrs N have said 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 understand that the PR also offers to have Mr and Mrs N provide a sworn affidavit. But I must remind them that we don't have strict evidential requirements. We aren't 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 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 and sworn affidavits aren't required.

As I explained in my PD, looking at testimony as a whole, I think it's clear that Mr and Mrs N purchased their preceding trial membership on the basis of the holidays it could provide. And, they then purchased full membership at the Time of Sale, having been very happy with the holidays they had enjoyed using their trial membership.

I acknowledged that Mr and Mrs N have suggested in their testimony that the Supplier told them that within 'a number of years' it would be possible to 'resell' their membership for a profit. But this only appears to represent what they were potentially told at the Time of Sale.

Further, I noted that their issues with the timeshare were due to how it functioned as a holiday product, in comparison to their trial membership. For example, they identified issues with availability and a lack of exclusivity. They also said that due to changes in their personal circumstances, they can no longer afford the maintenance fees in the way they could initially. And, suggested that these are the reasons they wanted to relinquish their membership and make a complaint.

I also acknowledged that in their testimony, Mr and Mrs N said that in 2018, they were told while on holiday that their timeshare had increased in value and given a specific figure in relation to this. And, that they should therefore retain it, which they did.

I didn't think the comments provided about this particularly assists me in understanding what happened at the Time of Sale and what Mr and Mrs N's motivations were at that time, considering this alleged conversation took place around five years after the Time of Sale. Further, I said it was unclear where exactly the representative they spoke with obtained the figure they've referred to and how exactly the representative justified or evidenced such a specific figure to them. I also said it was unclear how the representative would have prepared the slide presentation Mr and Mrs N had mentioned (with the specific figure, in relation to their membership in particular) in advance of what appears to have been an impromptu meeting. So, I explained this seems inherently unlikely.

So, ultimately, I wasn't persuaded that the evidence suggested that Mr and Mrs N purchased Balkan Jewel membership in whole or in part down to any breach of Regulation 14(3).

Here, the PR has stated that I've been inconsistent with my approach compared to previous decisions issued by the Service and has provided examples it feels demonstrates this. But my decision is based on consideration of Mr and Mrs N'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.

The PR has also reiterated that the judgment handed down in *Shawbrook & BPF v FOS*[2] 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 N have 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 N have adequately demonstrated that the promise of profit was a motivating factor to their decision to move ahead with the purchase – principal or otherwise.

I accept that within the PR's new submissions Mr and Mrs N have provided further evidence, stating that they were told the membership was an investment because they would get a 1% share in the Balkan Jewel hotel and that after 12 years they would receive a profit on their initial investment. And, if they had not been told this at the Time of Sale, they would not have signed up to purchase. However, with this evidence there is a real risk that Mr and Mrs N's testimony has been coloured by the Investigator's view and/or the outcome in *Shawbrook & BPF v FOS* and/or my Provisional Decision. 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 N's original statement.

So, as I said before, even if the Supplier had marketed or sold the membership as an investment in breach of Regulation 14(3) (which I still make no finding on here), I'm not persuaded Mr and Mrs N's decision to make the purchase was motivated by the prospect of a financial gain. So, I still don't think the credit relationship between Mr and Mrs N and the Lender was unfair to them for this reason.

Conclusion

In conclusion, given the facts and circumstances of this complaint, I do not think that the Lender acted unfairly or unreasonably when it dealt with Mr and Mrs N's Section 75 claim, and I am not persuaded that the Lender was party to a credit relationship with them under the Credit Agreement that was unfair to them for the purposes of Section 140A of the CCA. And having taken everything into account, I see no other reason why it would be fair or reasonable to direct the Lender to compensate them.

My final decision

For the reasons set out above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs N and Mr N to accept or reject my decision before 24 February 2026.

Fiona Mallinson
Ombudsman

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[2] *R (on the application of Shawbrook Bank Ltd) v Financial Ombudsman Service Ltd and R (on the application of Clydesdale Financial Services Ltd (t/a Barclays Partner Finance)) v Financial Ombudsman Service* [2023] EWHC 1069 (Admin) ('*Shawbrook & BPF v FOS*').