DRN-5831026

The complaint

Mr and Mrs M'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 October 2014, Mr and Mrs M purchased membership of a timeshare (the 'Fractional Club') from a timeshare provider (the 'Supplier'). This purchase was funded by a loan from the Lender, but is not the subject of this complaint and is included here for background information only.

On 24 March 2015 (the 'Time of Sale') Mr and Mrs M made a further purchase of Fractional Club membership from the Supplier, trading in their existing membership. They entered into an agreement with the Supplier to buy 900 fractional points at a cost of £8,039 (the 'Purchase Agreement')[1].

Fractional Club membership was asset backed – which meant it gave Mr and Mrs M 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 M paid for their Fractional Club membership by taking finance of £20,905 from the Lender in both of their names (the 'Credit Agreement'). This loan also consolidated their existing lending, taken out to fund their previous purchase.

Mr and Mrs M – using a professional representative (the 'PR') – wrote to the Lender on 2 December 2022 (the 'Letter of Complaint') to complain about:

1. Misrepresentations by the Supplier at the Time of Sale giving them a claim against the Lender under Section 75 of the CCA, which the Lender failed to accept and pay.
2. The Lender being party to an unfair credit relationship under the Credit Agreement and related Purchase Agreement for the purposes of Section 140A of the CCA.

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

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

1. Told them that Fractional Club membership gave them an automatic right to exit at an agreed date when that was not true.

[1] From the Supplier's notes, Mr and Mrs M had initially agreed to purchase 1,200 annual points but this then proved too expensive so they spoke with the Supplier and it was agreed that they would purchase 900 annual points instead. This and the finance with the Lender was then re-processed by early April 2015.

2. Told them that Fractional Club membership was an "investment" when that was not true.
3. Told them that the Supplier's holiday resorts were exclusive to its members and that membership would offer better availability and a higher standard of accommodation when that was not true.
4. Told them the Fractional Club membership was a very desirable product and they were being offered a heavily discounted purchase price only available on that day, when this was not true.

Mr and Mrs M 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 M.

(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 M 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. The same misrepresentations as set out above.
2. The terms of the agreement are unfair in themselves as the Lender paid the Supplier commission and this was not disclosed to Mr and Mrs M.
3. No comparisons with other loan companies were given and it wasn't mentioned that Mr and Mrs M were free to arrange their own finance for the purchase.
4. 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').
5. They were pressured into purchasing Fractional Club membership by the Supplier.
6. 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 prohibited practices under Schedule 1 of those Regulations.
7. The decision to lend was irresponsible because the Lender didn't carry out the right creditworthiness assessment.
8. The Supplier failed to provide Mr and Mrs M with the key information necessary for them to make an informed decision and didn't give them sufficient time to read the Purchase Agreement or Credit Agreement.

The Lender didn't send a response to the complaint. So, the PR, on Mr and Mrs M's behalf, referred the complaint to the Financial Ombudsman Service in April 2023. It was assessed by an Investigator who, having considered the information on file, upheld the complaint on its merits.

The Lender didn't provide any substantive response to the Investigator's assessment – which is why it was passed to me, to make a decision.

I considered the matter and issued a provisional decision (the 'PD') dated 5 September 2025. 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 M 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[2] 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 M'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 24 March 2015. I say this because Mr and Mrs M entered into the membership at that time based on the alleged misrepresentations by the Supplier, which Mr and Mrs M say they relied on. And, as the loan from the Lender was used to finance this membership, it was when Mr and Mrs M entered into the Credit Agreement, on 8 April 2015, that they suffered a loss.

Mr and Mrs M first notified the Lender of their Section 75 claim on 2 December 2022. 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 M'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 M 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 M 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:

[2] Which I note is also an issue here, since the purchase price prior to trade-in was over £30,000.

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; and*
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 M and the Lender.

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

Mr and Mrs M'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 M 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 M. 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 M 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 M. If there is any further information on this (or any other points raised in this provisional decision) that Mr and Mrs M wish to provide, I would invite them to do so in response to this provisional decision.

Mr and Mrs M also say they weren't given any comparison with any other loan companies, and it wasn't mentioned that they were free to arrange their own finance. But, I can't see that the Supplier was acting in an advisory role in this regard. And in any event, they haven't explained exactly how they feel this caused an unfairness in their particular case, and I see no reason to think it did.

Mr and Mrs M also 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. And with all of that being the case, there is insufficient evidence to demonstrate that Mr and Mrs M made the decision to purchase Fractional Club membership because their ability to exercise that choice was significantly impaired by pressure from the Supplier.

The PR also said the Supplier failed to provide Mr and Mrs M with the key information necessary for them to make an informed decision and didn't give them sufficient time to read the Purchase Agreement or Credit Agreement. But, they haven't specified exactly which information they weren't provided with or why exactly these points cause an unfairness in this particular case. From what I can see, Mr and Mrs M don't dispute receiving these documents and as I've already said above, even if they weren't given sufficient time to read

them at the Time of Sale, they were given a cooling off period to consider their purchase and the associated documentation. So, I can't see that this has caused an unfairness in the credit relationship that requires a remedy.

As outlined above, the PR also said there were misrepresentations made by the Supplier at the Time of Sale which made the credit relationship unfair. Misrepresentations could be something that led to an unfair debtor-creditor relationship[3], so I've considered what the PR has had to say with this in mind.

The PR says the Supplier told Mr and Mrs M that, in summary, they could automatically exit the membership at an agreed date i.e. that the end date was guaranteed, when that was not true. But I can't see that what the Supplier said here was actually untrue. I've not seen anything which makes me think that the Allocated Property would not be able to be sold at the conclusion of the contract period. And, the Terms and Conditions generally set out that the title to the property is held by independent trustees, the sale of the Allocated Property can only be carried out by the Trustees on or after the proposed sale date, and the Allocated Property cannot be removed from the trust before that sale date. What's more, the sale date can only be delayed by the unanimous written consent of all fractional owners, in which Mr and Mrs M are included.

Mr and Mrs M also say that they were told that Fractional Club membership was an 'investment', when that was not true. But for reasons I'll go on to explain further below, the membership plainly did have an investment element to it. So such a statement, if made (which I make no finding on here), would not have been untrue.

The PR said that the Supplier told them the product was desirable and they were being offered a heavily discounted purchase price only available on that day when this was not true. This doesn't appear to be a misrepresentation described in Mr and Mrs M's testimony, so there is little to no evidence to support the allegation made here. But in any event, I'm aware this particular Supplier did often offer discounted prices only available on a given day, so this would not appear to have been untrue.

The PR also said the Supplier told Mr and Mrs M that the holiday resorts were exclusive to its members and that membership would offer better availability and a higher standard of accommodation when that was not true. But again, these misrepresentations aren't specifically described in their testimony, so there is little to no evidence to support the allegations made here. What Mr and Mrs M have said is that they were told the purchase would give them more options and flexibility and, since they were buying an increased number of points, this would not appear to have been untrue.

So, I'm not persuaded there was a misrepresentation made by the Supplier at the Time of Sale which rendered the credit relationship between Mr and Mrs M and the Lender unfair to them.

I'm not persuaded, therefore, that Mr and Mrs M'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 Fractional Club membership was 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>

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[3] See Scotland & Reast v. British Credit Trust Limited [2014] EWCA Civ 790

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

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

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

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

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

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

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

To conclude, therefore, that Fractional Club membership was marketed or sold to Mr and Mrs M 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 competing evidence in this complaint as to whether Fractional Club 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 membership of the Fractional Club as an 'investment' or quantifying to prospective purchasers, such as Mr and Mrs M, 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 M as an investment. So, it's possible that Fractional Club membership wasn't marketed or sold to Mr and Mrs M as an investment in breach of Regulation 14(3).

On the other hand, 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. So, I accept that it's equally possible that Fractional Club membership was marketed and sold to Mr and Mrs M 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 M 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 M 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 PR did not originally provide a witness statement when they referred the complaint to our Service. But, they then did provide one in January 2024.

This witness statement was not signed but was dated 1 February 2021 and the PR has provided evidence that it was drafted at that date.

In this witness statement, Mr and Mrs M said, insofar as it relates to this purchase:

> *"The rep told us that we had not been given a very good deal previously and that this one would be a better investment us [sic]. We were told that with this deal, we would double the value of our points. We were told that this deal would allow us to have a lot more options and flexibility for travelling within the summer and winter months. Again, we were told that if we decided this was no longer for us, we would be able to sell our points. Because we had more points, we would make a greater profit."*

I acknowledge what Mr and Mrs M have said here, but this appears to only describe what they were potentially told at the Time of Sale, rather than what motivated them to make the purchase. In their statement, they go on to say:

> *"After we made this purchase, we had become very frustrated with the club. We were never able to get what we wanted, and we were always having to compromise. The resorts we did manage to book were also nothing compared to what we had been show [sic], at the time of purchase. We were shown private pools, with key fobbed secure gates. The accommodation was supposed to be the best of the best. What we actually got, was awful. There were no private facilities and we had even taken pictures of one of the rooms we had stayed in, as the standard of that room was so terrible and even the mattresses were just so thin and uncomfortable. So, in March 2015, we made a purchase with [the Supplier]."*

On my reading of what they've had to say, the reason for Mr and Mrs M's complaint and the focus of their testimony is on how the membership functions as a holiday product, rather than any potential profit from the sale of the Allocated Property.

Mr and Mrs M also go on to explain the reasons they now want to relinquish their timeshare and from what they've had to say this is due to the fact that they've now retired which has been a large change to their finances, and again, how the membership functions as a holiday product.

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 M'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 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 M and the Lender was unfair to them even if the Supplier had breached Regulation 14(3).

Mr and Mrs M's Commission Complaint

I note that one of Mr and Mrs M'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 Agreement. 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."

So, in conclusion, given the facts and circumstances of this complaint, I did not think that the Lender acted unfairly or unreasonably when it dealt with Mr and Mrs M's Section 75 claim, and I was 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 could see no other reason why it would be fair or reasonable to direct the Lender to compensate them.

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

Following my provisional decision, I also explained to both parties why I was not persuaded that Mr and Mrs M's credit relationship with the Lender was unfair to them for reasons relating to the commission arrangements between it and the Supplier. The Lender did not respond to this. The PR did respond but confirmed they did not have anything further to add and did not wish to dispute this point further.

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 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 M 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 M as an investment at the Time of Sale. They've also reiterated that they feel the membership was misrepresented by the Supplier for this same reason, meaning there is, in their view, a claim under Section 75 that should be upheld.

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.

As I also outlined above, following my provisional decision, I also communicated to both parties how I was not persuaded that Mr and Mrs M's credit relationship with the Lender was unfair to them for reasons relating to the commission arrangements between it and the Supplier. Neither party provided any further comments on this point. So, it follows that my conclusions on that point remain the same as previously communicated to both parties and

since it hasn't been disputed further, I won't therefore be commenting on it any further in this decision.

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 a statement from Mr and Mrs M, 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 M 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 M 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 request and sworn affidavits aren't required.

As I explained in my PD, although I acknowledged (and do so again here) that there was a possibility that the Supplier breached Regulation 14(3) at the Time of Sale, Mr and Mrs M's testimony didn't persuade me that any such breach (if it occurred) was material to their purchasing decision.

I explained that on my reading of what they've had to say, the reason for Mr and Mrs M's complaint, and the focus of their testimony, is on how the membership functions as a holiday product, rather than any potential profit from the sale of the Allocated Property. I also noted that Mr and Mrs M also go on to explain the reasons they now want to relinquish their timeshare and from what they've had to say this is due to the fact that they've now retired which has been a large change to their finances, and again, how the membership functions as a holiday product.

So, I wasn't persuaded that the evidence suggested that Mr and Mrs M purchased Fractional Club membership 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 M have had to say that they were persuaded to purchase due to the holidays the membership could provide.

The PR didn't provide any new evidence in relation to their point in this response to my PD. Instead, they simply briefly reiterated that they felt the membership was sold to Mr and Mrs M as an investment and suggest that if it wasn't for this breach, they would not have entered into the relevant agreement. They also referred to the judgment in *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*'), and said that in that case, it was confirmed that disclaimers in the relevant paperwork cannot outweigh credible

testimony of investment-based selling.

Again, I already acknowledged the possibility that the Supplier breached Regulation 14(3) at the Time of Sale, despite any disclaimers that were included in the sales paperwork. But importantly, as I already explained in my PD, regulatory breaches do not automatically create unfairness for the purposes of Section 140A. Whether any such breach led Mr and Mrs M to enter into the Purchase Agreement and the Credit Agreement is an important consideration. And, for the reasons above, along with all of the reasons I already explained in my PD, I'm simply not persuaded that any breach by the Supplier was material to Mr and Mrs M's purchasing decision.

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 M's specific circumstances. Each complaint turns on its own facts; an ombudsman's decision on how one timeshare sale occurred does not determine their, or any other ombudsman's, decisions about the facts of other sales at different times for different purchases.

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 M'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 M and the Lender was unfair to them for this reason.

Other points

The PR also reiterated that they felt the Supplier made misrepresentations at the Time of Sale. In particular, they've reiterated that they feel the Supplier misrepresented the product as an investment when this was not true. And, they've said they feel Mr and Mrs M's testimony supports that such a misrepresentation was made at the Time of Sale.

Here, I'd remind the PR that in my provisional decision, I concluded that Mr and Mrs M made their claim under Section 75 to the Lender more than six years after the Time of Sale, I didn't think it was unfair or unreasonable of the Lender to reject Mr and Mrs M's concerns about the Supplier's alleged misrepresentations at the Time of Sale. And, I haven't been provided with anything in response to my PD which changes my conclusion on this. Indeed, it seems the PR hasn't engaged with my specific conclusion on that point in their response to the PD.

But in any event, I don't think the alleged misrepresentation the PR has referred to here is a reason to uphold the complaint on the basis that it caused an unfairness to the associated credit relationship. I say that because telling prospective members that they were investing their money because they were buying a fraction or share of one of the Supplier's properties was not untrue. And even if the Supplier's sales representatives went further and suggested that the share in question would increase in value, perhaps considerably so, that sounds like nothing more than a honestly held opinion as there isn't any accompanying evidence to persuade me that the relevant sales representative(s) said something that, while an opinion, amounted to a statement of fact that they did not hold or could not have reasonably held.

So again, I don't think it was unfair or unreasonable of the Lender to reject Mr and Mrs M's concerns about the Supplier's alleged misrepresentations at the Time of Sale, and I am not persuaded that these alleged misrepresentations have caused an unfairness to the credit relationship between Mr and Mrs M and the Lender.

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 M'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 M and Mr M to accept or reject my decision before 5 January 2026.

Fiona Mallinson
Ombudsman