DRN-5831591

The complaint

Mr and Mrs S'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

Mr and Mrs S purchased membership of a timeshare (the 'Fractional Club') from a timeshare provider (the 'Supplier') on 28 December 2017 (the 'Time of Sale'). They entered into an agreement with the Supplier to buy 1,040 fractional points at a cost of £15,530 (the 'Purchase Agreement').

Fractional Club membership was asset backed – which meant it gave Mr and Mrs S 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 S paid for their Fractional Club membership by taking finance of £15,530 from the Lender in their joint names (the 'Credit Agreement').

Mr and Mrs S – using a professional representative (the 'PR') – wrote to the Lender on 10 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.
3. The decision to lend being irresponsible because the Lender did not carry out the right creditworthiness assessment.

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

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

- Told them that Fractional Club membership had a guaranteed end date when that was not true.
- Told them that Fractional Club membership was an "investment" when that was not true.
- Told them that Fractional Club membership offered better availability in exclusive resorts in a higher standard of accommodation. This was untrue.

Mr and Mrs S 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 S.

(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 S 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:

- 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').
- They were pressured into purchasing Fractional Club membership by the Supplier.
- The Lender paid the Supplier commission which was not disclosed to Mr and Mrs S.
- The Supplier's sales presentation at the Time of Sale included misleading actions and/or misleading omissions under the Consumer Protection from Unfair Trading Regulations 2008 (the 'CPUT Regulations') as well as a prohibited practice under Schedule 1 of those Regulations.
- The decision to lend was irresponsible because the Lender didn't carry out the right creditworthiness assessment.
- No alternative finance options were offered or explained.
- The Supplier failed to provide sufficient information in relation to the Fractional Club's ongoing costs.

The Lender dealt with Mr and Mrs S's concerns initially as a claim, which it was unable to provide a substantive response to. As a result, the PR referred the complaint to the Financial Ombudsman Service.

The Lender sent its final response to Mr and Mrs S's complaint on 4 May 2023, rejecting it on every ground.

Mr and Mrs S then confirmed they wished for their complaint to be considered by this 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.

The provisional decision

Having considered everything that had been submitted, I didn't think this complaint ought to be upheld. As this was a different outcome to that reached by the Investigator, I set out my initial thoughts in a provisional decision (the 'PD') and invited both sides to submit any new evidence or arguments that they wished me to consider before I made my final decision.

In the PD 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.

Mr and Mrs S's testimony

As part of its submissions to this Service, the PR has sent a statement, in the name of Mr and Mrs S, and dated 7 October 2020. This statement set out their recollections of their entire relationship with the Supplier. As regards the Time of Sale that I am considering here, they said the following:

> *"The meeting on holiday started at 9am, they took us to breakfast. The selling lasted all day, we were exhausted. They brought lunch to us, so we didn't need to leave, they kept saying, "wait 5 minutes, we'll see if we can get you a better deal". The fractional points were sold to us as an investment in property and we were advised that in 19 years we could sell back to Club La Costa and make a profit. There was a lot of pressure and we didn't feel as though we could leave. I also have Indian citizenship and my husband, and I aren't sure if we're going to stay in the UK long-term, if we move to India, we won't be able to use the timeshare. This was a big concern for us and so we asked them how easy it would be for us to exit the timeshare if we changed our minds and didn't want it anymore, they said, "all you need to do is tell us or go online, it's that easy. If at any time you don't want it, you can cancel" - this did not turn out to be true. My husband and I were also thinking of having a baby, I told them that I couldn't plan holidays that far in advance, they said that you could always carry your points over from one year to another. They offered us a reduced membership fee, we told them, "we can do it, but we don't really want it". There was a lot of pressure, we were on "holiday-mode" and it seemed right at the time – we quickly found out that it wasn't."*

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

As both sides may already know, a claim against the Lender under Section 75 essentially mirrors the claim Mr and Mrs S could make against the Supplier. Certain conditions must be met if this protection is engaged – which are set out in the CCA. The Lender does not dispute that the relevant conditions are met in this complaint, and I'm satisfied that they are.

This part of the complaint was made for several reasons that I set out at the start of this decision. They include the suggestion that Fractional Club membership had been misrepresented by the Supplier because Mr and Mrs S were told the membership had a guaranteed end date, when that was not true. But no evidence has been adduced to support this alleged misrepresentation. It has not been mentioned in Mr and Mrs S's statement. But in any event I can't actually see that what has allegedly been said here is 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. The Terms and Conditions 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 property cannot be removed from the trust before that sale date. What's more, the sale date can only be delayed for up to two years by the unanimous written consent of all fractional owners, in which Mr and Mrs S are included.

The Letter of Complaint also sets out that Mr and Mrs S were told they were buying an investment in a specific piece of "real property" when that was not true. However, telling prospective members that they were buying a fraction or share of one of the Supplier's properties was not untrue. Mr and Mrs S's share in the Allocated Property was clearly the purchase of a share of the net sale proceeds of a specific property in a specific resort. And while the PR might question the exact legal mechanism used to give them that interest, it did not change the fact that they acquired such an interest.

As for the rest of the Supplier's alleged pre-contractual misrepresentations, while I recognise that Mr and Mrs S have concerns about the way in which their Fractional Club membership was sold, they have not persuaded me that there was an actionable misrepresentation by the Supplier at the Time of Sale for the other reasons they allege. And I say that because they have simply not been mentioned in their statement. In the absence of any direct evidence from Mr and Mrs S as to what was said, by whom and in what context, I am not persuaded that there was an actionable misrepresentation by the Supplier for the reasons they allege.

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

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

I have already explained why I am not persuaded that the contract entered into by Mr and Mrs S was misrepresented by the Supplier in a way that makes for a successful claim under Section 75 of the CCA and outcome in this complaint. But Mr and Mrs S 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 S 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 – which includes training material that I think is likely to be relevant to the sale;*
2. *The provision of information by the Supplier at the Time of Sale, including the contractual documentation and disclaimers made by the Supplier;*
3. *Evidence provided by both parties on what was likely to have been said and/or done at the Time of Sale; 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 S and the Lender.

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

Mr and Mrs S'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 S 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 S. 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 S 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 S.

The PR has also said that Mr and Mrs S weren't given a choice of creditor. But I haven't seen that the Supplier was acting in an advisory capacity here to Mr and Mrs S. I also can't see that Mr and Mrs S were prevented from arranging their own payment for the memberships if they had wished to. But in any event, the PR hasn't explained why the point its raised here made the credit relationship unfair in this particular case.

Mr and Mrs S 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 S 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 S'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>The Supplier's alleged breach of Regulation 14(3) of the Timeshare Regulations</u>

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

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

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

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

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

Mr and Mrs S'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 S 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 S, 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 S as an investment. So, it's possible that Fractional Club membership wasn't marketed or sold to them as an investment in breach of Regulation 14(3).

On the other hand, I also 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 S as an investment in breach of Regulation 14(3). And this is what the PR says happened, and it is this allegation, and the allegation that this breach rendered the associated credit relationship unfair, that was upheld by the Investigator at this Service.

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 S rendered unfair?

Having found that it was possible that the Supplier breached Regulation 14(3) of the Timeshare Regulations at the Time of Sale, I now need to consider what impact that breach had on the fairness of the credit relationship between Mr and Mrs S and the Lender under the Credit Agreement and related Purchase Agreement, as the case law on Section 140A makes it clear that regulatory breaches do not automatically create unfairness for the purposes of that provision. Such breaches and their consequences (if there are any) must be considered in the round, rather than in a narrow or technical way.

Indeed, it seems to me, if I am to conclude that a breach of Regulation 14(3) led to a credit relationship between Mr and Mrs S 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.

When considering what led Mr and Mrs S into the Fractional Club purchase, I am guided by what they have said in their statement in this regard. Although they have set out that the Supplier told them that the membership was "…an investment in property and we were advised that in 19 years we could sell back to Club La Costa and make a profit" they have not said this was why they made the purchase.

Indeed, the statement goes into some detail about why they were reluctant to make the purchase, including that they thought they may not be able to use the timeshare if they moved to India. And they have set out that they asked the Supplier how easy it would be to cancel the membership if they no longer wanted it. I find it hard to understand how, if the motivation to buy the Fractional Club membership was the investment element and the potential for profit when the Allocated Property was sold, Mr and Mrs S would have enquired about how they might cancel the membership before that time if their circumstances changed and they were no longer able to take the holidays.

This makes me think that Mr and Mrs S most likely bought the Fractional Club membership for the holidays it offered them. So as Mr and Mrs S themselves don't persuade me that their purchase was motivated by their share in the Allocated Property and the possibility of a profit, I don't think a breach of Regulation 14(3) by the Supplier was likely to have been material to the decision they ultimately made.

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

<u>The provision of information by the Supplier at the Time of Sale</u>

It is clear from the submissions of everyone involved in this complaint that there was a lot of information passed between the Supplier and Mr and Mrs S when they purchased membership of the Fractional Club. But the PR says that the Supplier failed to provide them with all of the information they needed to make an informed decision, specifically that the Supplier failed to provide sufficient information in relation to the Fractional Club's ongoing costs.

One of the main aims of the Timeshare Regulations, and the Consumer Rights Act 2015 (the 'CRA') was to enable consumers to understand the financial implications of their purchase so that they were/are put in the position to make an informed decision. And if a supplier's disclosure and/or the terms of a contract did not recognise and reflect that aim, and the consumer ultimately lost out or almost certainly stands to lose out from having entered into a contract whose financial implications they didn't fully understand at the time of contracting, that may lead to the Timeshare Regulations and the CRA being breached, and, potentially the credit agreement being found to be unfair under Section 140A of the CCA.

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

Given the facts and circumstances of this complaint, I am not persuaded that the Supplier's

alleged breaches of the CRA are likely to have prejudiced Mr and Mrs S's purchasing decision at the Time of Sale and rendered their credit relationship with the Lender unfair to them for the purposes of Section 140A of the CCA. And I say this because I cannot see that Mr and Mrs S would likely have been unaware of the requirement to pay annual management charges as part their membership. That requirement was set out in the contractual documentation. And they haven't said, either in the Letter of Complaint or in their testimony, what the Supplier told them in this regard. Nor have they said what they ended up paying, and how this was not what they were led to believe would be the case.

Moreover, as I haven't seen anything else to suggest that there are any other reasons why the credit relationship between the Lender and Mr and Mrs S was unfair to them because of an information failing by the Supplier, I'm not persuaded it was.

Mr and Mrs S's Commission Complaint

I note that one of Mr and Mrs S's other concerns relates to alleged payments 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 Hopcroft v Close Brothers Ltd [2025] UKSC 33 ('Johnson, Wrench and Hopcroft') 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 what, if any, commission was paid by the Lender in relation to the Credit Agreement. So, once I know more, I will finalise my findings on this complaint.

Conclusion

In conclusion, as things currently stand, I do 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 am not persuaded that the Lender was party to a credit relationship with Mr and Mrs S under the Credit Agreement that was unfair to them for the purposes of Section 140A of the CCA – nor do I see any other reason why it would be fair or reasonable to direct the Lender to compensate them.

But, as I've already said, I do not know what, if any, commission was paid by the Lender in relation to the Credit Agreement. And with that being the case, it is necessary to wait for that information before finalising my thoughts on the merits of this complaint."

The responses to the PD

The Lender responded to the PD and accepted it. The PR, on Mr and Mrs S's behalf, also responded but did not accept it, and provided some further comments and evidence that they wished to be considered.

Following this I also communicated to both sides how I was not persuaded that Mr and Mrs S's credit relationship with the Lender was unfair to them for reasons relating to the commission arrangements between it and the Supplier.

The PR responded to say it had nothing further to add in relation to the commission arrangements, but maintained that the complaint ought to be upheld for the reasons it set out following the PD.

Having received the relevant responses from both sides, I am 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 S 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 S 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 PR has stated that I've been inconsistent in my approach when compared to previous decisions issued by the Service, and has provided examples it feels demonstrates this. It says that each of these other complaints had testimony almost identical to that given by Mr and Mrs S, and the deciding Ombudsman found those statements sufficient to prove a breach of Regulation 14(3) of the Timeshare Regulations. But my decision is based on consideration of Mr and Mrs S'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 of different purchases. And as I said in the PD, although I found there was a possibility that the Supplier breached Regulation 14(3) at the Time of Sale, whether or not there was a breach of the relevant prohibition by the Supplier is not ultimately determinative of the outcome in this complaint, so I didn't think it necessary to make a formal finding on that particular issue for the purposes of this decision. And that was because I didn't think that the credit relationship between Mr and Mrs S and the Lender would have been rendered unfair to them *even if* the Supplier had breached Regulation 14(3) of the Timeshare Regulations at the Time of Sale, because I thought they would most likely have made the purchase anyway.

The PR has also reiterated that the judgment handed down in *Shawbrook & BPF v FOS*[1] 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 S have provided demonstrates that this was the case. But, as I explained in my PD, I'm not persuaded from the testimony that Mr and Mrs S have adequately demonstrated that the promise of profit was a motivating factor to their decision to move ahead with the purchase – principal or otherwise.

As part of its post-PD submissions, the PR has provided an email sent to it from Mr and Mrs S, dated 18 September 2025. Where relevant to this part of their complaint they said:

> *"We were told by the salesperson that in 19 years from the time of purchase we would get a return from one of their properties when sold as we would hold fractional rights over it through our membership. This was the main motivation to purchase the fractional ownership as we were made to believe that it wasn't a holiday membership but an investment and that the returns after sale would help offset the initial cost to us."*

This follows closely what Mr and Mrs S said in their original statement, but here they have additionally said that it was the investment element of the membership that was their *main motivation* to make the purchase. However, with this evidence there is a real risk that Mr and Mrs S's testimony has been coloured by what I said in the PD. After all, it was sent to the PR after they had received the PD explaining that one of the reasons why I didn't think their

[1] *R (on the application of Shawbrook Bank Ltd) v Financial Ombudsman Service Ltd and R (on the application of Clydesdale Financial Services Ltd (t/a Barclays Partner Finance)) v Financial Ombudsman Service* [2023] EWHC 1069 (Admin)

complaint ought to be upheld was that I wasn't persuaded that the potential for a profit was material to their purchasing decision. So, on balance, the timing and way 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 S's original statement.

And as I've said, their original statement goes into some detail about why they were reluctant to make the purchase, including that they thought they may not be able to use the timeshare if they moved to India. And they repeat this in this supplementary statement, saying that they were planning on having children soon after the purchase and they thought they would be able to surrender the membership if they found they could no longer use it. I find it hard to understand how, if the motivation to buy the Fractional Club membership was the investment element and the potential for profit when the Allocated Property was sold, Mr and Mrs S would have been willing to just surrender the membership if their circumstances changed and they were no longer able to take the holidays. So I think the holidays that the membership could provide was the reason they bought it, and I think they would have done so even if there had been a breach of Regulation 14(3).

So, ultimately, for the above reasons, along with those I already explained in my PD, I remain unpersuaded that any breach of Regulation 14(3) was material to Mr and Mrs S's purchasing decision.

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 S's decision to make the purchase was motivated by the prospect of a financial gain. So, I am not persuaded that the credit relationship between Mr and Mrs S 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 S'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 Mr and Mrs S.

My final decision

For all of 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 S and Mrs S to accept or reject my decision before 8 January 2026.

Chris Riggs
Ombudsman