

The complaint

Mrs R'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 her under Section 140A of the Consumer Credit Act 1974 (as amended) (the 'CCA'), (2) deciding against paying claims under Section 75 of the CCA and (3) paying undisclosed commissions to a credit broker.

What happened

Mr and Mrs R were members of a timeshare provider (the 'Supplier') – having purchased several products from it over time. But the product at the centre of this complaint is their membership of a timeshare that I'll call the 'Fractional Club' – which they bought on 30 December 2013 (the 'Time of Sale'). They entered into an agreement with the Supplier to buy 3,240 fractional points at a cost of £5,984 after trading in their existing timeshare which included 2,988 fractional points (the 'Purchase Agreement').

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

Mr and Mrs R paid for their Fractional Club membership by taking finance of £5,984 from the Lender (the 'Credit Agreement') in Mrs R's sole name. As such only she is eligible to complain about the Credit Agreement and the credit relationship that arose from it. And only she is protected under Section 75 of the CCA. As such I will mostly refer to her in this decision.

Mrs R – using a professional representative (the 'PR') – wrote to the Lender on 12 February 2019 (the 'Letter of Complaint') to raise several different concerns. As those concerns haven't changed since they were first raised, and as both sides are familiar with them, it isn't necessary to repeat them in detail here beyond the summary above.

The Lender dealt with Mrs R's concerns as a complaint and issued its final response letter on 14 March 2019, rejecting it on every ground.

The complaint was then referred to the Financial Ombudsman Service. It was assessed by an Investigator who, having considered the information on file, rejected the complaint on its merits.

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

I issued a provisional decision followed by an email explaining why I was not planning to uphold this complaint.

The PR replied on behalf of Mrs R to say that she disagreed and provided some additional comments and documents for me to consider when making my final 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 no different to that shared in several hundred ombudsman decisions on very similar complaints. And with that being the case, it is not necessary to set it out here. But I also think the following regulatory rules/guidance are relevant:

The Office of Fair Trading's Irresponsible Lending Guidance – 31 March 2010

The primary purpose of this guidance was to provide greater clarity for businesses and consumer representatives as to the business practices that the Office of Fair Trading (the 'OFT') thought might have constituted irresponsible lending for the purposes of Section 25(2B) of the CCA. Below are the most relevant paragraphs as they were at the relevant time:

- Paragraph 2.2
- Paragraph 2.3
- Paragraph 5.5

The OFT's Guidance for Credit Brokers and Intermediaries – 24 November 2011

The primary purpose of this guidance was to provide clarity for credit brokers and credit intermediaries as to the standards expected of them by the OFT when they dealt with actual or prospective borrowers. Below are the most relevant paragraphs as they were at the relevant time:

- Paragraph 2.2
- Paragraph 3.7
- Paragraph 4.8

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 (a copy of which is below), for broadly the same reasons.

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 provisional decision in the main relate to the issue of whether the credit relationship between Mrs R and the Lender was unfair. In particular, the PR has provided further comments in relation to whether the membership was

sold to Mrs R as an investment at the Time of Sale and provided some unsigned and undated comments from Mrs R in response to my provisional decision.

As outlined in my provisional decision, 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 provisional decision. 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 provisional findings. So, I'll focus here on the PR's points raised in response.

START OF COPY OF PROVISIONAL FINDINGS

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.

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. The Lender doesn't dispute that the relevant conditions are met. But for reasons I'll come on to below, it isn't necessary to make any formal findings on them here.

It was said in the Letter of Complaint that Fractional Club membership had been misrepresented by the Supplier at the Time of Sale because Mrs R were:

1. Told by the Supplier that Fractional Club membership had a guaranteed end date when that was not true.
2. Told by the Supplier that they would have access to exclusive member-only resorts when that was not true.
3. Told by the Supplier that Fractional Club membership was an "investment" when that was not true.

However, 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. After all, a share in an allocated property was, by its very nature, an investment.

And while, as I understand it, the sale of the Allocated Property could be postponed in certain circumstances according to the Fractional Club Rules, Mrs R say little to nothing to persuade me that they were given a guarantee by the Supplier that the Allocated Property would be sold on a specific date when such a promise would have been impossible to stand by given the inevitable uncertainty of selling property some way into the future.

My understanding is that the Supplier regularly invited non-members to stay at its resorts, and I think it is unlikely that it would've described its resorts as exclusive in the way alleged.

And as there's nothing else on file to support the PR's allegations, I'm not persuaded that there was a representation by the Supplier on the issues in question that constituted a false statement of fact.

So, while I recognise that Mrs R and the PR have concerns about the way in which Fractional Club membership was sold by the Supplier, when looking at the claim under Section 75 of the CCA, I can only consider whether there was a factual and material misrepresentation by the Supplier. For the reasons I've set out above, I'm not persuaded that there was. And that means that I don't think that the Lender acted unreasonably or unfairly when it dealt with this Section 75 claim.

Section 75 of the CCA: the Supplier's Breach of Contract

I have already summarised how Section 75 of the CCA works and why it gives consumers a right of recourse against a lender. So, it is not necessary to repeat that here other than to say that, if I find that the Supplier is liable for having breached the Purchase Agreement, the Lender is also liable.

Mrs R say that they could not holiday where and when they wanted to – which, on my reading of the complaint, suggests that the Supplier was not living up to its end of the bargain, potentially breaching the Purchase Agreement.

Yet, like any holiday accommodation, availability was not unlimited – given the higher demand at peak times, like school holidays, for instance. Some of the sales paperwork likely to have been signed by Mr and Mrs R states that the availability of holidays was/is subject to demand. It also looks like they made use of their fractional points to holiday on several occasions. I accept that they may not have been able to take certain holidays. But I have not seen enough to persuade me that the Supplier had breached the terms of the Purchase Agreement.

So, from the evidence I have seen, I do not think the Lender is liable to pay Mrs R any compensation for a breach of contract by the Supplier. And with that being the case, I do not think the Lender acted unfairly or unreasonably in relation to this aspect of the complaint either.

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

I've already explained why I'm not persuaded that Fractional Club membership was actionably misrepresented by the Supplier at the Time of Sale. But there are other aspects of the sales process that, being the subject of dissatisfaction, I must explore with Section 140A in mind if I'm to consider this complaint in full – which is what I've done next.

Having considered the entirety of the credit relationship between Mrs R and the Lender along with all of the circumstances of the complaint, I don't 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 standard of the Supplier's commercial conduct – which includes its sales and marketing practices at the Time of Sale along with any relevant training material.
2. The provision of information by the Supplier at the Time of Sale, including the contractual documentation and disclaimers made by the Supplier.
3. The commission arrangements between the Lender and the Supplier at the Time of Sale and the disclosure of those arrangements.

4. Evidence provided by both parties on what was likely to have been said and/or done at the Time of Sale.
5. The inherent probabilities of the sale given its circumstances.
6. Where relevant, any existing unfairness from a related credit agreement.

I have then considered the impact of these on the fairness of the credit relationship between Mrs R and the Lender.

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

Mrs R's complaint about the Lender being party to an unfair credit relationship was and is made for several reasons.

The PR says, for instance that:

1. The right checks weren't carried out before the Lender lent to Mrs R; and
2. Mrs R were pressured by the Supplier into purchasing Fractional Club membership at the Time of Sale.

However, neither of this strike me as reasons why this complaint should succeed.

I haven't seen anything to persuade me that the right checks weren't carried out by the Lender given this complaint's 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 Mrs R 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 her for this reason. But from the information provided, I am not satisfied that the lending was unaffordable for Mrs R.

I acknowledge that Mr and Mrs R 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 her 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 R made the decision to purchase Fractional Club membership because their ability to exercise that choice was significantly impaired by pressure from the Supplier.

Overall, therefore, I don't think that Mrs R's credit relationship with the Lender was rendered unfair to her under Section 140A for any of the reasons above. But there is another reason, perhaps the main reason, why the PR now says the credit relationship with the Lender was unfair to her. And that's the suggestion that Fractional Club membership was marketed and sold to her as an investment in breach of prohibition against selling timeshares in that way.

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

A share in the Allocated Property clearly constituted an investment as it offered Mrs R the prospect of a financial return – whether or not, like all investments, that was more than what they first put into it. But it is important to note at this stage that 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 Mrs R 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 her as an investment, i.e. told her or led her to believe that Fractional Club membership offered her 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 R, 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.

On the other hand, I acknowledge that the Supplier's sales process 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 Mrs R 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's 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 the Consumer 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 Mrs R 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 that, if I am to conclude that a breach of Regulation 14(3) led to a credit relationship between Mrs R and the Lender that was unfair to her and warranted relief as a result, whether the Supplier's breach of Regulation 14(3) led her to enter into the Purchase Agreement and the Credit Agreement is an important consideration.

But on my reading of the evidence before me, the prospect of a financial gain from Fractional Club membership was not an important and motivating factor when Mr and Mrs R decided to go ahead with their purchase. I say this because Mr and Mrs R's client statement does not say that Fractional Club membership was sold or marketed to them as an investment on this occasion. And it goes on to explain that their reasons for the purchase related to their expanded family and the need for larger holiday accommodation:

“In December 2013, we were on holiday in Spain once again when we were approached and told that we would have to attend another update session. While there we made the mistake of letting the representatives know that our son had recently gotten engaged and this triggered the very high pressured and persistent sales tactics.

The representatives said that in order to be able to [take] the holidays needed for the additional members of the family, we would need to purchase more points.

Everything was based off of this 19-year period which was still running from the first fractional agreement. It was even made clear about the availability issues. As we were upgrading to even larger apartments, we would definitely have availability for whenever we wanted to go on holiday.”

So, it seems to me that in Mr and Mrs R’s own words, the reason they agreed to make the purchase at the Time of Sale was to be able to get access to larger holiday accommodation and better availability – rather than to increase their investment in the Fractional Club.

Ultimately, Mr and Mrs R don’t persuade me that their purchase was motivated by their share in the Allocated Property and the possibility of a profit. As such, I do not 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, 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 R’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 Mrs R and the Lender was unfair to her even if the Supplier had breached Regulation 14(3).

The provision of information by the Supplier at the Time of Sale

The PR says that Mr and Mrs R were not given sufficient information at the Time of Sale by the Supplier to make an informed choice.

It isn’t clear what information the PR thinks the Supplier failed to provide at the Time of Sale. But as I’ve already indicated, the case law on Section 140A makes it clear that it does not automatically follow that regulatory breaches create unfairness for the purposes of the unfair relationship provisions. The extent to which such mistakes render a credit relationship unfair must also be determined according to their impact on the complainant.

So, while I acknowledge that it is also possible that the Supplier did not give Mr and Mrs R sufficient information, in good time, in order to satisfy the requirements of Regulation 12 of the Timeshare Regulations (which was concerned with the provision of ‘key information’), even if that was the case, neither Mrs R nor the PR have persuaded me that they were deprived of information that would have led her to make a different purchasing decision at the Time of Sale. And with that being the case, even if there were information failings (which I make no formal finding on), I can’t see why they led to a financial loss.

Mrs R says that a payment of commission from the Lender to the Supplier at the Time of Sale should lead me to uphold this complaint because, simply put, information in relation to that payment went undisclosed at the Time of Sale.

the Supreme Court handed down an important judgment on 1 August 2025 in a series of cases concerned with the issue of commission: *Johnson v FirstRand Bank Ltd*, *Wrench v FirstRand Bank Ltd* and *Hopcraft v Close Brothers Ltd* [2025] UKSC 33 (“*Johnson, Wrench and Hopcraft*”).

The Supreme Court ruled that, in each of the three cases, the commission payments made to car dealers by lenders were legal, as claims for the tort of bribery, or the dishonest assistance of a breach of fiduciary duty, had to be predicated on the car dealer owing a fiduciary duty to the consumer, which the car dealers did not owe. A “disinterested duty”, as described in *Wood v Commercial First Business Ltd & ors and Business Mortgage Finance 4 plc v Pengelly* [2021] EWCA Civ 471, is not enough.

However, the Supreme Court held that the credit relationship between the lender and Mr Johnson was unfair under Section 140A of the CCA because of the commission paid by the lender to the car dealer. The main reasons for coming to that conclusion included, amongst other things, the following factors:

- The size of the commission (as a percentage of the total charge for credit). In Mr Johnson’s case it was 55%. This was “so high” and “a powerful indication that the relationship...was unfair” (see paragraph 327).
- The failure to disclose the commission.
- The concealment of the commercial tie between the car dealer and the lender.

The Supreme Court also confirmed that the following factors, in what was a non-exhaustive list, will normally be relevant when assessing whether a credit relationship was/is unfair under Section 140A of the CCA:

- The size of the commission as a proportion of the charge for credit.
- The way in which commission is calculated (a discretionary commission arrangement, for example, may lead to higher interest rates).
- The characteristics of the consumer.
- The extent of any disclosure and the manner of that disclosure (which, insofar as Section 56 of the CCA is engaged, includes any disclosure by a supplier when acting as a broker).
- Compliance with the regulatory rules.

From my reading of the Supreme Court’s judgment in *Johnson, Wrench and Hopcraft*, it sets out principles which apply to credit brokers other than car dealer–credit brokers. So, when considering allegations of undisclosed payments of commission like the one in this complaint, *Johnson, Wrench and Hopcraft* is relevant law that I’m required to consider under Rule 3.6.4 of the Financial Conduct Authority’s Dispute Resolution Rules (‘DISP’).

But I don’t think *Johnson, Wrench and Hopcraft* assists Mrs R in arguing that her credit relationship with the Lender was unfair to her for reasons relating to commission given the facts and circumstances of this complaint.

I haven’t seen anything to suggest that the Lender and Supplier were tied to one another contractually or commercially in a way that wasn’t properly disclosed to Mrs R, nor have I

seen anything that persuades me that the commission arrangement between them gave the Supplier a choice over the interest rate that led Mrs R into a credit agreement that cost disproportionately more than it otherwise could have.

I acknowledge that it's possible that the Lender and the Supplier failed to follow the regulatory guidance in place at the Time of Sale insofar as it was relevant to disclosing the commission arrangements between them.

But as I've said before, 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. And with that being the case, it isn't necessary to make a formal finding on that because, even if the Lender and the Supplier failed to follow the relevant regulatory guidance at the Time of Sale, it is for the reasons set out below that I don't think any such failure is itself a reason to find the credit relationship in question unfair to Mrs R.

In stark contrast to the facts of Mr Johnson's case, the amount of commission paid by the Lender to the Supplier for arranging the Credit Agreement that Mrs R entered wasn't high. At £598.40, it was only 10% of the amount borrowed and even less than that (3.5%) as a proportion of the charge for credit. So, had Mrs R known at the Time of Sale that the Supplier was going to be paid a flat rate of commission at that level, I'm not persuaded that she either wouldn't have understood that or would have otherwise questioned the size of the payment at that time. After all, Mrs R wanted Fractional Club membership and had no obvious means of her own to pay for it. And at such a low level, the impact of commission on the cost of the credit she needed for a timeshare she wanted doesn't strike me as disproportionate. So, I think she would still have taken out the loan to fund her purchase at the Time of Sale had the amount of commission been disclosed.

What's more, based on what I've seen so far, the Supplier's role as a credit broker wasn't a separate service and distinct from its role as the seller of timeshares. It was simply a means to an end in the Supplier's overall pursuit of a successful timeshare sale. I can't see that the Supplier gave an undertaking – either expressly or impliedly – to put to one side its commercial interests in pursuit of that goal when arranging the Credit Agreement. And as it wasn't acting as an agent of Mrs R but as the supplier of contractual rights that she obtained under the Purchase Agreement, the transaction doesn't strike me as one with features that suggest the Supplier had an obligation of 'loyalty' to her when arranging the Credit Agreement and thus a fiduciary duty.

Overall, therefore, I'm not persuaded that the commission arrangements between the Supplier and the Lender were likely to have led to a sufficiently extreme inequality of knowledge that rendered the credit relationship unfair to Mrs R.

Commission: The Alternative Grounds of Complaint

While I've found that Mrs R credit relationship with the Lender wasn't unfair to her for reasons relating to the commission arrangements between it and the Supplier, two of the grounds on which I came to that conclusion also constitute separate and freestanding complaints to Mrs R's complaint about an unfair credit relationship. So, for completeness, I've considered those grounds on that basis here.

The first ground relates to whether the Lender is liable for the dishonest assistance of a breach of fiduciary duty by the Supplier because it took a payment of commission from the Lender without telling Mrs R (i.e., secretly). And the second relates to the Lender's

compliance with the regulatory guidance in place at the Time of Sale insofar as it was relevant to disclosing the commission arrangements between them.

However, for the reasons I set out above, I'm not persuaded that the Supplier – when acting as credit broker – owed Mrs R a fiduciary duty. So, the remedies that might be available at law in relation to the payment of secret commission aren't, in my view, available to her. And while it's possible that the Lender failed to follow the regulatory guidance in place at the Time of Sale insofar as it was relevant to disclosing the commission arrangements between it and the Supplier, I don't think any such failure on the Lender's part is itself a reason to uphold this complaint because, for the reasons I also set out above, I think she would still have taken out the loan to fund her purchase at the Time of Sale had there been more adequate disclosure of the commission arrangements that applied at that time.

END OF COPY OF MY PROVISIONAL FINDINGS

The PR's response to my provisional findings

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 Mrs R, 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 Mrs R has 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 Mrs R 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/or sworn affidavits aren't required.

As I explained in my provisional findings, although I found there was a possibility that the Supplier breached Regulation 14(3) at the Time of Sale, in Mr and Mrs R's own words, the reason they agreed to make the purchase at the Time of Sale was to be able to get access to larger holiday accommodation and better availability – rather than to increase their investment in the Fractional Club. The PR has provided a further statement from Mrs R. However, with this statement there is a real risk that Mrs R's recollection 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 Mrs R's original statement.

The PR has said that I've been inconsistent with my approach compared to previous decisions issued by the Financial Ombudsman Service and has provided examples it feels demonstrates this. But my decision is based on consideration of Mrs R'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* 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 statements Mrs R has provided demonstrates that this was the case. But, as I explained in my provisional decision, I'm not persuaded from the statements that Mrs R has adequately demonstrated that the promise of profit was a motivating factor to her decision to move ahead with the purchase – principal or otherwise.

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

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 Mrs R'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 Mrs R and the Lender was unfair to her for this reason.

Conclusion

In conclusion, I do not think that the Lender acted unfairly or unreasonably when it dealt with the relevant Section 75 claims, and I am not persuaded that the Lender was party to a credit relationship with Mrs R under the Credit Agreement that was unfair to Mrs R 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 Mrs R.

My final decision

For the reasons I've explained, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs R to accept or reject my decision before 7 January 2026.

Phillip Lai-Fang
Ombudsman