DRN-5847964

The complaint

Mr V and Mrs V'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 V and Mrs V purchased membership of a timeshare (the 'Fractional Club') from a timeshare provider (the 'Supplier') on 20 February 2014 (the 'Time of Sale'). They entered into an agreement with the Supplier to buy 1500 fractional points at a cost of £17,569 (the 'Purchase Agreement').

Fractional Club membership was asset backed – which meant it gave Mr V and Mrs V 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 V and Mrs V paid for their Fractional Club membership by taking finance of £18,348 from the Lender, which also covered their first year's annual management charges and fees for the credit provided (the 'Credit Agreement').

Mr V and Mrs V – using a professional representative (the 'PR') – originally wrote to the Lender on 02 July 2019 (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. A breach of contract by the Supplier giving them a claim against the Lender under Section 75 of the CCA, which the Lender failed to accept and pay.
3. 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.
4. 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 V and Mrs V 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 they were buying an interest in a specific piece of "real property" when that was not true.
- told them that Fractional Club membership was an "investment" when that was not true because it is worthless.
- told them that the Supplier's holiday resorts were exclusive to its members when that was not true.

Mr V and Mrs V 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 V and Mrs V.

(2) Section 75 of the CCA: the Supplier's breach of contract

Mr V and Mrs V say that the Supplier breached the Purchase Agreement because there is no guarantee that they will receive their share of the net sale proceeds of the Allocated Property.

Mr V and Mrs V also say also says that they found it difficult to book the holidays they wanted when they wanted. As a result of the above, Mr V and Mrs V say that they have a breach of contract claim against the Supplier, 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 V and Mrs V.

(3) Section 140A of the CCA: the Lender's participation in an unfair credit relationship

The Letter of Complaint set out several reasons why Mr V and Mrs V 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').
- The contractual terms setting out (i) the duration of their Fractional Club membership and/or (ii) the obligation to pay annual management charges for the duration of their membership were unfair contract terms under the Unfair Terms in Consumer Contracts Regulations 1999 (the 'UTCCR').
- 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.
- The Supplier failed to provide sufficient information in relation to the Fractional Club's ongoing costs.

The Lender dealt with Mr V and Mrs V's concerns as a complaint and issued its final response letter on 12 August 2019, not accepting any grounds of the complaint.

Mr V and Mrs V then referred their complaint to the Financial Ombudsman Service. In November 2023, an Investigator issued an assessment which upheld Mr V and Mrs V's complaint. The PR responded to say it agreed with the Investigator's position. The Lender disagreed with the Investigator's assessment and asked for an Ombudsman's decision – which is why it was passed to me.

I issued my provisional findings to the parties on 01 September 2025. In my provisional decision, I said (in italics and smaller font for clarity):

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. And having done that, I do not currently think this complaint should be upheld. But before I explain why, I want to make it clear that my role as an Ombudsman is not to address every single point that has been made to date. Instead, it is to decide what is fair and reasonable in the circumstances of this complaint. So, if I have not commented on, or referred to,

something that either party has said, that does not mean I have not considered it.
What is more, I have made my decision on the balance of probabilities – which means I have based it on what I think is more likely than not to have happened given the available evidence and the wider circumstances.

Section 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 V and Mrs V could make against the Supplier.

Certain conditions must be met if the protection afforded to consumers is engaged, including, for instance, the cash price of the purchase and the nature of the arrangements between the parties involved in the transaction. The Lender does not dispute that the relevant conditions are met in this complaint. And as I'm satisfied that Section 75 applies, if I find that the Supplier is liable for having misrepresented something to Mr V and Mrs V at the Time of Sale, the Lender is also liable.

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 V and Mrs V were told that they were buying an interest 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 V and Mrs V 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 V and Mrs V 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.

The PR says that Mr V and Mrs V were told that there was a guaranteed end date to the membership, but they was not true. In fact, under the terms of their membership, the Allocated Property was to be placed for sale on a set future date and their membership ended once that sale completed – not on the date it was placed for sale. But there is nothing in the contractual documentation or the sales material that I have seen that points to the Supplier saying that membership ended on a set future date. Further, I've read Mr V and Mrs V's witness statement and I can't see that they say they were told this either. So, based on the evidence in this complaint, I can't say this alleged misrepresentation is made out.

Mr V and Mrs V say that the Supplier told them Fractional Club membership was an investment and the PR argues this was a misrepresentation. However, for the reasons I will explain below, Fractional Club membership did have an investment element to it, so if they were told that it would not have been untrue. So this would not, in my view, amount to a misrepresentation.

Finally, Mr V and Mrs V said:

"We were led to believe that we would be joining an exclusive membership which would give us free holidays all over the world with [the Supplier's] properties when we wanted, we would just need to phone 3 weeks before we wanted to go."

And

"Exclusivity and safety were other benefits which we based our purchase on but this is no longer the case as these properties are available for anyone to book on various websites."

I have taken from this that they meant they were told the Supplier's resorts would be 'exclusive' to it members, but that was untrue as non-members could now book to stay at resorts online. It is difficult to know precisely what Mr V and Mrs V were told and their allegations are too vague for me to say the Supplier said anything that was untrue. For example, they were not members when they first visited the Supplier's resort, so they must have known that some non-members were able to stay at resorts at the Time of Sale. Further, just because several years later, non-members were able to stay at the Supplier's resorts, doesn't mean that at the Time of Sale any statement made was either untrue or that the salesperson didn't believe it to be true.

What's more, as there's nothing else on file that persuades there were any false statements of existing fact made to Mr V and Mrs V by the Supplier at the Time of Sale, so I do not think 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 V and Mrs V 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 75 of the CCA: the Supplier's breach of contract

I've already summarised how Section 75 of the CCA works and why it gives Mr V and Mrs V a right of recourse against the Lender. So, it isn't 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.

Mr V and Mrs V say that they could not holiday where and when they wanted to – which, on my reading of the complaint, suggests that they consider that the Supplier was not living up to its end of the bargain, and had breached the Purchase Agreement. 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 signed by Mr V and Mrs V 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 five occasions between January 2015 and July 2017. 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.

Mr V and Mrs V also say that the Supplier breached the Purchase Agreement because there is no guarantee that they will receive their share of the net sale proceeds of the Allocated Property. I understand that they are saying that they fear that, when the time comes for the Allocated Property to be sold, they will not receive their share of the sales proceeds. However, it would seem that any breach of contract (if that occurs) lies in the future and is currently uncertain.

Overall, therefore, from the evidence I have seen to date, I do not think the Lender is liable to pay Mr V and Mrs V 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 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 V and Mrs V was misrepresented (or breached) 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 V and Mrs V 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.

As Section 140A of the CCA is relevant law, I do have to consider it. So, in determining what is fair and reasonable in all the circumstances of the case, I will consider whether the credit relationship between Mr V and Mrs V and the Lender was unfair.

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

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

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

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

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

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

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

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

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

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

Act that, where appropriate, they should be taken into account in assessing whether the relationship between the creditor and the debtor is unfair."[1]

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

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

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

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

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

I have considered the entirety of the credit relationship between Mr V and Mrs V 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; 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 V and Mrs V and the Lender.

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

Mr V and Mrs V 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 V and Mrs V and carried on unfair commercial practices which were prohibited under the CPUT Regulations for the same reasons they gave for their Section 75 claim for misrepresentation. 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 V and Mrs V. 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 V and Mrs V 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

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

provided, I am not satisfied that the lending was unaffordable for Mr V and Mrs V. If there is any further information on this (or any other points raised in this provisional decision) that Mr V and Mrs V wish to provide, I would invite them to do so in response to this provisional decision.

I'm not persuaded, therefore, that Mr V and Mrs V 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.

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?

The Lender does not dispute, and I am satisfied, that Mr V and Mrs V'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 V and Mrs V'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 V and Mrs V as an investment in breach of Regulation 14(3), I have to be persuaded that it was more likely than not that the Supplier marketed and/or sold membership to them as an investment, i.e. told them or led them to believe that Fractional Club membership offered them the prospect of a financial gain (i.e., a profit) given the facts and circumstances of this complaint.

There is evidence in this complaint that the Supplier made efforts to avoid specifically describing membership of the Fractional Club as an 'investment' or quantifying to prospective purchasers, such as Mr V and Mrs V, 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 sold to Mr V and Mrs V with the primary purpose of taking holidays and I note Mr V and Mrs V's acceptance of going through some of those documents with a named salesperson from the Supplier.

With that said, I acknowledge that the Supplier's training material left open the possibility that the sales representative may have positioned Fractional Club membership as an investment. So, I accept

that it's possible that Fractional Club membership was marketed and sold to them as an investment in breach of Regulation 14(3) given the difficulty the Supplier was likely to have had in presenting a share in the net sales proceeds of the Allocated Property as an important feature of Fractional Club membership without breaching the relevant prohibition.

So, I have taken all of that into account. However, on my reading of the evidence provided and my thoughts on Mr V and Mrs V recollections of the sales process at the Time of Sale, that is not what appears to have happened at that time. They did describe being told by the Supplier that they would receive the net sale proceeds of their share in the Allocated Property once their Fractional Club membership ended. And although they did say that the Supplier led them to believe that their Fractional Club membership would lead to a financial gain (i.e., a profit) I'm not persuaded by this because I think had they received the misrepresentations they claim to have received, I think they would have complained bitterly when they discovered some of those key representations weren't true when they tried to sell the membership back to the Supplier in 2016.

After all, if Fractional Club membership had been marketed and sold as an investment by the Supplier at the Time of Sale, it is difficult to understand why they did not complain when they didn't get the 8-10% return they say they would get when they went to sell the membership back to the Supplier in 2016. And with that being the case, in the absence of persuasive evidence to suggest otherwise, I find that it is unlikely that the Supplier led them to believe that membership offered them the prospect of a financial gain (i.e., a profit), given how they acted once they were told they couldn't sell the membership back in 2016.

But, in this case, even if I were to conclude that, on this occasion, membership was sold by the Supplier in breach of Regulation 14(3), I am not currently persuaded that would make a difference to the outcome in this complaint anyway. I will explain why.

Was the credit relationship between the Lender and Mr V and Mrs V rendered unfair?

As the Supreme Court's judgment in Plevin makes clear, it does not automatically follow that regulatory breaches create unfairness for the purposes of Section 140A. Such breaches and their consequences (if there are any) must be considered in the round, rather than in a narrow or technical way.

I am also mindful of what HHJ Waksman QC (as he then was) and HHJ Worster had to say in Carney and Kerrigan (respectively) on causation.

In Carney, HHJ Waksman QC said the following in paragraph 51:

"[…] In cases of wrong advice and misrepresentation, it would be odd if any relief could be considered if they did not have at least some material impact on the debtor when deciding whether or not to enter the agreement. […] in a case like the one before me, if in fact the debtors would have entered into the agreement in any event, this must surely count against a finding of unfair relationship under s140A. […]"

And in Kerrigan, HHJ Worster said this in paragraphs 213 and 214:

*"[…] The terms of section 140A(1) CCA do not impose a requirement of "causation" in the sense that the debtor must show that a breach caused a loss for an award of substantial damages to be made. The focus is on the unfairness of the relationship, and the court's approach to the granting of relief is informed by that, rather than by a demonstration that a particular act caused a particular loss. Section 140A(1) provides only that the court **may** make an order **if** it determines that the relationship is unfair to the debtor. […]*

[…] There is a link between (i) the failings of the creditor which lead to the unfairness in the relationship, (ii) the unfairness itself, and (iii) the relief. It is not to be analysed in the sort of linear terms which arise when considering causation proper. The court is to have regard to all the relevant circumstances when determining whether the relationship is unfair, and the same sort of approach applies when considering what relief is required to remedy that unfairness. […]"

So, it seems to me that, if I am to conclude that a breach of Regulation 14(3) led to a credit relationship between Mr V and Mrs V and the Lender that was unfair to them and warranted relief as a result, whether the Supplier's breach of Regulation 14(3) which, having taken place during its antecedent negotiations with Mr V and Mrs V, is covered by Section 56 of the CCA, falls within the notion of "any other thing done (or not done) by, or on behalf of, the creditor" for the purposes of 140(1)(c) of the CCA and deemed to be something done by the Lender) lead them to enter into the Purchase Agreement and the Credit Agreement is an important consideration. And, having considered everything, I don't think that any potential breach did lead them to enter into the agreements.

In their written testimony Mr V and Mrs V have said:

"We believed that we would be able to exit the timeshare before the expiry of the term and that (the Supplier) would buy it back from us with a return of 8% to 10%. When we approached (the Supplier) in 2016 to sell the timeshare to them we were sent to another company that asked us to pay to advertise with them for 6 weeks duration without any guarantee that our timeshare would be sold."[2]

The Lender seems to corroborate the fact that the consumers made contact with the Supplier in January 2016. So, it seems clear to me that Mr V and Mrs V knew at that time that one of the key reasons they say they made their purchase – the ability to make a profit on their Fractional Club membership – was baseless. And yet it took them over three years from then to complain, during which time they continued to pay their annual management charges and make a number of holiday reservations.

So, I'm left to consider the question of why would Mr V and Mrs V - who had discovered a significant problem with their membership for reasons relating to why they now say they made the purchase in the first place - continued to pay their annual management charges and continue to holiday, but only complain about this issue over three years after finding out they had been misled on a key issue for them in purchasing this membership. These actions by Mr V and Mrs V seem more likely to me to be those of people whose motivations for this purchase were not investment or profit related.

But Mr V and Mrs V carried on with the membership for some time and didn't complain until some years after they say they were told they'd been given untrue information at to point of sale. In my mind, their later actions sit more with the idea that they purchased their membership for the holiday benefits it gave and, as they themselves said, they tried to see if they could sell the membership back to the Supplier when they were in financial difficulty.

Having considered everything as I've described 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 V and Mrs V'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 V and Mrs V and the Lender was unfair to them even if the Supplier had breached Regulation 14(3).

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

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 V and Mrs V when they purchased membership of the Fractional Club at the Time of Sale. But they and PR say that the Supplier failed to provide them with all of the information they needed to make an informed decision.

The PR also says that the contractual terms governing the ongoing costs of Fractional Club membership and the consequences of not meeting those costs were unfair contract terms under the UTCCR's.

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[2] I can't see that the Supplier, in any of the sales documents or marketing material, said that it would buy back memberships from its members. However, I am proceeding on the basis that this was Mr V and Mrs V's understanding of how membership worked.

One of the main aims of the Timeshare Regulations and the UTCCR 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 UTCCR being breached, and, potentially the credit agreement being found to be unfair under Section 140A of the CCA.

However, as I've said before, 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.

Here the PR has argued that the terms of the contract are unclear and contradictory under the UTCCRs, and that Mr V and Mrs V were subjected to unfair sales practices as per the CPUT regulations. However, the PR hasn't given any description of how these terms were unclear or contradictory or how these sales practices led Mr V and Mrs V to make a decision to purchase when they otherwise wouldn't have done so. But I think its important to note that Mr V and Mrs V explain in their witness statement that they had some of the paperwork described to them by the supplier's representatives. And that paperwork, although a summary, did set out in broad terms how Fractional Club membership was designed to work. Despite what the PR has said, I don't think the evidence I've seen shows that Mr V and Mrs V would have made a different purchasing decision had more, or clearer, information been given to them at the Time of Sale.

Given the facts and circumstances of this complaint, I am not persuaded that the Supplier's alleged breaches of the CPUT Regulations and the UTCCRs are likely to have prejudiced Mr V and Mrs V'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 it seems clear to me that Mr V and Mrs V would have made this purchase irrespective of whether there had been a failing here or not.

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 V and Mrs V was unfair to them because of an information failing by the Supplier, I'm not persuaded it was.

In summary, I wasn't minded to think that the Lender acted unfairly or unreasonably when it dealt with Mr V and Mrs V's section 75 claim.

At the time of my provisional decision I deferred my conclusions on the matter of commission disclosure in order to review that issue further. I've since written to the parties setting out my thoughts on why I wasn't persuaded to uphold this aspect of the complaint.

Applying the principles and factors set out in the Supreme Court judgment[3] handed down on 1 August 2025, I found nothing to suggest to suggest that the Lender and Supplier were tied to one another contractually or commercially in a way that wasn't properly disclosed to Mr V and Mrs V. Nor did I see anything that persuaded me that the commission arrangements between them gave the Supplier a choice over the interest rate which led Mr V and Mrs V into a credit agreement that cost disproportionately more than it otherwise could have.

Further, the flat rate and amount of commission paid was such that it gave me no reason to think that any failure to disclose it to Mr V and Mrs V had a material impact on their decision to enter into the Credit Agreement. At £ 1834.80, it was only 9.96% of the amount borrowed and even less than that (5.46%) as a proportion of the charge for credit. That didn't strike me as disproportionate; nor were the surrounding circumstances otherwise capable of rendering

[3] *Johnson v FirstRand Bank Ltd, Wrench v FirstRand Bank Ltd and Hopcraft v Close Brothers Ltd* [2025] UKSC 33 ("*Hopcraft, Johnson and Wrench*")

unfair the credit relationship between the Lender and Mr V and Mrs V such that the Lender needed to take any action in redress.

I didn't find any of the arguments put forward demonstrated that the credit agreement between Mr V and Mrs V and the Lender was unfair to them under section 140A of the CCA. Absent any other reason why it would be fair or reasonable to direct the Lender to compensate Mr V and Mrs V, I said I didn't propose to uphold the complaint.

Responses to my provisional findings

The Lender didn't respond to my provisional decision. The PR didn't accept the proposed outcome. It made further submissions in support of Mr V and Mrs V's position. Having received and reviewed these, I'm now proceeding with my final decision.

In doing so, I'm conscious that the PR has made a series of assertions surrounding the provision of information relating to commission arrangements. These include, among other things, expressing doubt that the Lender has provided key information, requesting that the information we have received be shared with it in full, and asking that we do not proceed with a decision before this is done and it has had an opportunity to make further submissions.

The PR's requests have been addressed by us under separate correspondence. For reasons I will explain in the course of this decision, I've concluded that it's appropriate for me to proceed with my determination.

The legal and regulatory context

The legal and regulatory context that I think is relevant to this complaint has been shared in several hundred published decisions on very similar complaints, as well as in previous correspondence with the parties. So there's no need for me to set this out again in detail here. I simply remind the parties that our rules[4] say that in considering what is fair and reasonable in all the circumstances of the complaint, I will 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.

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.

After considering the case afresh and having regard for what's been said in response to my provisional decision and in my subsequent correspondence I find it offers no persuasive reason to depart from the conclusions I've previously set out. I'll explain why.

The PR originally raised various points of complaint, such as those giving rise to Mr V and Mrs V's section 75 claim, which I addressed in my provisional decision. In its response, it hasn't made any further comments in relation to most of its original points, or said anything that leads me to think it disagrees with my provisional conclusions in relation to those points. So I'll focus here on the points the PR *has* made in response.

The PR's response to my provisional decision relates mainly to the issue of whether the credit relationship between Mr V and Mrs V and the Lender was unfair *per* section 140A of

[4] Financial Conduct Authority ("FCA") Handbook – DISP 3.6.4R ("R" denotes a rule).

the CCA. In particular, the PR has provided more comment in relation to whether the membership was sold to Mr V and Mrs V as an investment at the Time of Sale. It has also made further submissions in support of its position that the payment of a commission by the Lender to the Supplier led to an unfair credit relationship between the Lender and Mr V and Mrs V.

The PR has submitted a document which appears to be comments from Mr V and Mrs V which covers a number of areas which, where I consider them worth addressing have been covered in my provisional comments. So I'll only add that I'm still not persuaded by their comments as to what happened at the point of sale. These latter comments essentially repeat allegations made as to what happened but fall short of being persuasive to my mind. And on reviewing Mr V and Mrs V's original comments afresh I note that there is similar lack of description of how it was sold to them contrary to 14.3 and why such a failing motivated their purchase in their earlier submissions. So I don't think these submissions are sufficient to fairly conclude that there had been a breach of 14.3 at the time and that that had consequently motivated them in their purchasing decision.

Mr V and Mrs V say that they took the time between discovering they weren't getting an '8-10%' return on their purchase in January 2016 and when they complained sometime later looking for legal support. This may be the case, however it is of note that Mr V and Mrs V say that they were in financial difficulty at the time and if that was the case it would seem likely that they'd have looked to stop paying the Supplier's fees and that would be an urgent issue for them, but they didn't. And they'd settled the lending some time before this point, so there was no risk to their credit file or risk of action from the Lender at this time. Nor was there the concurrent cost of repaying the lending. And the membership here could be cancelled at that time of their contact with the Supplier. But Mr V and Mrs V continued to pay the Supplier's fees and indeed book holidays and at least envisage if not incur the additional costs of going on such holidays. So I don't find their comments persuasive here and so, for these reasons and those given above, I'm not persuaded that the prospect of financial gain was a motivation for this purchase.

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

The PR has questioned whether my provisional conclusions run contrary to precedent decisions issued by my ombudsman colleagues and the judgment handed down in *Shawbrook and BPF v FOS*. I don't believe they do. However, for the avoidance of doubt, other decisions issued by other ombudsmen do not have a precedent effect like some court judgments might, and each ombudsman must determine each case on its own specific facts. Further, the judgment referred to did not make a blanket finding that all products of the type Mr V and Mrs V purchased were mis-sold in the way the PR appears to be suggesting.

I remind the PR that in my provisional decision I accepted the possibility that Fractional Club membership was marketed and/or sold to Mr V and Mrs V as an investment, in breach of Regulation 14(3). I went on to explain that relevant case law[5] indicates that in considering the question of relief for any resultant unfairness in the credit relationship, I needed to take into account any material impact of such a breach on Mr V and Mrs V's decision whether to enter into the Purchase and Credit Agreements. It doesn't strike me that doing so flies in the face of either the handed down judgment or previous decisions the PR has mentioned.

While the PR has referred me to Mr V and Mrs V's recollections and the Supplier's training materials, I have already considered these and what was said. And I set out in my

[5] *Carney* and *Kerrigan*

provisional decision the reasons why I didn't find that evidence sufficiently persuasive that Mr V and Mrs V's purchase decision would have been any different, given the other motivational factors they had described. Having re-examined Mr V and Mrs V's statement that remains my view, for the reasons previously given.

So as I said before, whether or not the Supplier marketed or sold Fractional Club membership as an investment in breach of Regulation 14(3), I'm not persuaded Mr V and Mrs V's decision to make the purchase was materially impacted by the prospect of a financial gain. It follows that I find the credit relationship between Mr V and Mrs V and the Lender was not rendered unfair to them for this reason.

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

The PR has asked for the documents the lender has provided to us to show the commission arrangements. While I appreciate the PR would like to have full disclosure of all of the documents and information the Lender has provided, our rules do not require me to provide this when dealing with a complaint.

As the PR has been informed, under DISP 3.5.9R I may, where I consider it appropriate, accept information in confidence (so that only an edited version, summary or description is disclosed to the other party). That is what I have done in my provisional decision.
I'm satisfied that agreements between the Lender and the Supplier are commercially sensitive and that the summary information on commission arrangements we've already shared with the PR is appropriate in this case.

I see no reason to find that this prejudices any arguments the PR or Mr V and Mrs V is able to make in support of Mr V and Mrs V's position. The PR has demonstrated its ability to present Mr V and Mrs V's case and has had sufficient time to consider and make any further arguments.

As I've noted, the PR has disagreed with my provisional conclusions on whether the Lender should pay redress because of an unfair credit relationship arising in connection with commission arrangements between the Lender and the Supplier. I note that the PR has made a number of arguments on this matter broadly but not on this particular case. But for the sake of completeness I'll address them. The PR has argued to this service that, in summary, that when the overall circumstances of those arrangements are considered in the round, the credit relationship was plainly unfair. In support of this position the PR has expressed, among other things, that:

- The provisional decision doesn't properly apply the Supreme Court's judgment in *Hopcraft, Johnson and Wrench,* which concluded a range of factors informed whether a credit relationship between a consumer and a lender was unfair
- A conflict of interest existed on the part of the Supplier, who provided neither independent nor competent explanation of the credit
- Failure to disclose payment of commission – irrespective of the size of any payment - was a regulatory breach that goes to the heart of fairness

I appreciate the time the PR has taken to put together its submissions in general. But I don't find what it has said offers persuasive grounds for me to reach a different conclusion on this issue in this case.

I've previously set out my thoughts on any impact the Supreme Court's conclusions in *Hopcraft, Johnson and Wrench* has on Mr V and Mrs V's arguments that their credit relationship with the Lender was unfair to them for reasons relating to commission given the facts and circumstances of this complaint.

The PR's response doesn't offer anything that leads me to think that, for the most part, any of the factors it has referenced were in fact at play in Mr V and Mrs V's case. It hasn't, for example, provided evidence to show the existence of commercial or contractual ties that were concealed from Mr V and Mrs V, any persuasive reasons to conclude that the Supplier's role was that of advisor to Mr V and Mrs V, or to show that any other conflict of interest arose from the roles the Supplier did perform.

For such a claim to be successful would require more than the bare assertions that have been made in this case. I'm not persuaded that it is sufficient, as the PR seems to contend, simply to suggest unsubstantiated allegations of fact and require that the Lender disprove them else the credit relationship be deemed unfair. This issue was considered in the judgment in *Promontoria (Henrico) Ltd v. Gurcharn Samra* [2019] EWHC 2327 (Ch) ("*Samra*"), where HHJ David Cooke held (at para.26):

> *"…the onus is on the claimant[6] to show, to the normal civil standard, that the relationship is not unfair because of any of the reasons set out in s 140A(1)(a)-(c). Whether it is so unfair is a matter for the court's overall judgment having regard to all the relevant circumstances and matters, including matters relating (i.e. personal) to the creditor and debtor. This onus on the claimant does not however mean, in my judgement…that where Mr Samra[7] makes allegations of fact on which he relies he does not have the burden of proving them to the normal civil standard. The onus placed on the creditor is as to the relationship between it and the debtor, and does not have the effect that factual allegations made by Mr Samra must be accepted unless they can be positively disproved by contrary evidence."*[8]

I'm satisfied the Lender has provided sufficient information in response to my enquiries to enable me to reach a conclusion about its commission arrangements with the Supplier. I've seen nothing in this case that leads me to think what the Lender has said about the commission arrangements. is inaccurate. So there's no reason for me to reach a different finding over those commission arrangements.

In its correspondence the PR has emphasised the regulatory breaches connected with a failure to disclose commission payment. I have already set out why in my view this doesn't automatically lead to an unfair credit relationship for which the Lender needs to offer redress. While I've considered all that the PR has submitted, I remain of that view.

Section 140A conclusion

Given all of the factors I've looked at in this part of my decision, and having taken all of them into account, I remain unpersuaded that the credit relationship between Mr V and Mrs V and the Lender under the Credit Agreement and related Purchase Agreement was unfair to them such that it warrants the Lender offering any redress.

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[6] In this case the creditor answering a claim of an unfair credit relationship arising out of an overdraft facility.

[7] In this case the borrower making an allegation that there was an unfair credit relationship.

[8] I further note that in *Wilson v Clydesdale Financial Services Ltd t/a Barclays Partner Finance* [2021] (Unreported), the court also took the view that the burden is on the debtor to prove on the balance of probabilities *the facts* that purportedly create the unfairness. It is then that the lender's burden of proof that requires it to prove *the relationship* was not unfair kicks in. While I do not suggest this offers legal precedent, the subject matter of that case was a fractional timeshare sale, and given the similarities seems to me an appropriate approach when considering the facts in this case.

Commission: The Alternative Grounds of Complaint

In my previous correspondence I mentioned that some of the grounds for complaint about the fairness or otherwise of the credit relationship could also constitute separate and freestanding complaints. I'll reiterate my findings 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 Mr V and Mrs V (that is, secretly). 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.

For the reasons I set out previously, I'm not persuaded that the Supplier – when acting as credit broker – owed Mr V and Mrs V 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 them. 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. For the reasons I have also previously set out, I think they would still have taken out the loan to fund their purchase at the Time of Sale had there been more adequate disclosure of the commission arrangements that applied at that time.

Conclusion

After careful reconsideration of the facts and circumstances of this complaint, I adopt my provisional conclusions as part of my final decision. For the reasons I've given above and in my earlier correspondence I've mentioned, I don't think the Lender acted unfairly or unreasonably when it dealt with Mr V and Mrs V's section 75 claim. And I'm not persuaded that the Lender was party to a credit relationship with Mr V and Mrs V that was unfair to them for the purposes of section 140A of the CCA. Having taken everything into account, I see no other reason why it would be fair or reasonable for me to direct the Lender to compensate Mr V and Mrs V.

My final decision

For the reasons set out above, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr V and Mrs V to accept or reject my decision before 11 March 2026.

Rod Glyn-Thomas
Ombudsman