DRN-5848700

The complaint

Mr and Mrs H'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 claims under Section 75 of the CCA.

What happened

Mr and Mrs H was the member 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 7 November 2017 (the 'Time of Sale'). They entered into an agreement with the Supplier to buy 1,040 fractional points at a cost of £16,430 (the 'Purchase Agreement').

Fractional Club membership was asset backed – which meant it gave Mr and Mrs H 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 H paid for their Fractional Club membership by taking finance of £16,430 from the Lender (the 'Credit Agreement').

Mr and Mrs H – using a professional representative (the 'PR') – wrote to the Lender on 10 November 2021 (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 rejected Mr and Mrs H's concerns in a letter dated 16 January 2022. The complaint was then referred to the Financial Ombudsman Service. It was assessed by an Investigator who, having considered the information on file, upheld the complaint on its merits.

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

I issued a provisional decision explaining that I was not planning to uphold the complaint. I later sent an email to the Lender and the PR explaining my provisional findings on commission, which were that the commission arrangements between the Lender and Supplier did not create an unfair relationship between the Lender and Mr and Mrs H.

The Lender accepted my provisional decision and provided no response to my provisional findings on commission.

The PR disagreed with my provisional findings and provided some comments and documents it wanted 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. 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. Having done so, I've reached the same decision as that which I outlined in my provisional findings – and for broadly the same reasons. A copy of my provisional findings is below. As such, I do not uphold this complaint.

START OF COPY OF PROVISIONAL DECISION

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 Mr and Mrs H 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 Fractional Club membership was an "investment" when that was not true.

3. Told by the Supplier that Fractional Club membership would offer better availability to exclusive resorts and a higher standard of accommodation 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, Mr and Mrs H 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. And as there's nothing else on file to support the PR's allegation, I'm not persuaded that there was a representation by the Supplier on the issue in question that constituted a false statement of fact.

On point (3), it is not clear what the Supplier would've been comparing availability and accommodation standards to. This was Mr and Mrs H's first Fractional Club purchase, and they do not mention this allegation in their client statements. So, I am not persuaded that the Supplier told them this.

So, while I recognise that Mr and Mrs H 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.

Mr and Mrs H 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 H states that the availability of holidays was/is subject to demand. It also looks like they made use of their fractional points to holiday and later upgraded their Fractional Club membership. 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 breached the terms of the Purchase Agreement.

So, from the evidence I have seen, I do not think the Lender is liable to pay Mr and Mrs H 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 Mr and Mrs H 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. When 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 Mr and Mrs H and the Lender.

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

Mr and Mrs H'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 Mr and Mrs H.

2. Mr and Mrs H were pressured by the Supplier into purchasing Fractional Club membership at the Time of Sale.

However, as things currently stand, neither 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 Mr and Mrs H 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. But from the information provided, I am not satisfied that the lending was unaffordable for Mr and Mrs H.

I acknowledge that Mr and Mrs H 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 H 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 Mr and Mrs H'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 why the PR now says the 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.

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

A share in the Allocated Property could constitute an investment as it offered Mr and Mrs H 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 Mr and Mrs H 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, 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 H, 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 Mr and Mrs H as an investment in breach of Regulation 14(3).

However, whether 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 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 Mr and Mrs H 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 Mr and Mrs H 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.

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 H decided to go ahead with their purchase. I say this because:

- On their complaint about the upgrade purchased in July 2018, the client statement provided (which was dated 15 October 2020, and the digital file (in Word format, created and last modified on 21 December 2020), which I'll refer to as the 'Original Client Statement', covered both what happened at the Time of Sale and in July 2018. But it did not mention Fractional Club membership being sold to Mr and Mrs H as an investment at the Time of Sale, nor suggest that this was material to their decision to purchase.

- My colleague issued a provisional decision on the complaint about the July 2018 sale on 20 June 2025. This explained that the complaint was not being upheld in part because, although the allegation that the timeshare was sold as an investment was made in the letter of complaint in that case, this was rather generic and offered little detail. And that in the Original Client Statement Mr and Mrs H did *"not refer to the investment element of the membership at all, which [the deciding ombudsman] would expect them to have done if it had been a significant factor in their decision-making"*. Neither Mr and Mrs H nor the PR responded to this provisional decision or to the subsequent final decision – which said the same thing.

- In this complaint, a different client statement (the 'Second Client Statement') was provided on 16 November 2023. This was in a different digital format (PDF) and differed to the original as follows[1]:

> *"We have a timeshare agreement with Club La Costa, however since taking this agreement we have found that they have deliberately lied to us so as to induce us into the contract.*

[1] wording that wasn't in the Original Client Statement is **highlighted in bold**, and wording that was in the Original Client Statement but is not in the Second Client Statement is **[highlighted in bold in square brackets]**

In 2017, I saw an advert online for a cheap holiday, my wife and I hadn't been away for a long time as she doesn't like flying, but I thought, "if we don't do it now, we'll never do it", and so I decided to book. The only condition was that we'd need to attend a meeting whilst we were on holiday, but we didn't know what it was going to be about. I had no idea it was a timeshare company, and they didn't tell us. At the time of the meeting, the representatives drove us to another villa as this is where it was taking place. We knew that we would have to go as a condition of the holiday, however because of the location we couldn't have left even if we wanted to. We were told the meeting would take around an hour, but it actually took 4-5 hours, there was a lot of pressure, and it was a really, really hard sell. Eventually we agreed ***to the fractional points 'bricks and mortar' investment they were pushing us to buy so that we would make a profit from the investment at the end****, and Club La Costa organised finance for us. They filled in all the paperwork, so we only had to sign, we were only shown one creditor and one option. We were not offered time to discuss things between ourselves and they didn't tell us about commission. They didn't do an affordability check or ask us to provide payslips etc. to confirm we could afford it.*

As such, on the 7th of November 2017, we purchased 1,040 fractional points for £16,430, paid for with a loan from Shawbrook Bank.

In July 2018, we were on holiday when the representatives asked to meet with us. We hadn't booked this holiday as part of our timeshare; it was offered to us as a bonus. At the meeting, they said that with the ***[deal] investment property*** *we had, it was 1 week for 2 people, we could upgrade and get 2 weeks for 6 people for a quarter of the price. There was heavy sales pressure, and the meeting went on for around 6 hours.* ***The purpose of buying these new points was to increase our fractional investment and the return at the end. We already knew we would be getting a profit but this would just increase it.***

*As such, on the 22nd of July 2018 we purchased a further 1,200 fractional points for £3,695, paid for with a loan from First Holiday Finance, organised by Club La Costa, under the same circumstances as before****[.] : Club La Costa organised finance for us. They filled in all the paperwork, so we only had to sign, we were only shown one creditor and one option. We were not offered time to discuss things between ourselves and they didn't tell us about commission. They didn't do an affordability check or ask us to provide payslips etc. to confirm we could afford another investment purchase.***

After taking the timeshare, I found that we really couldn't afford it. We were sceptical at the time and so we double checked with the reps, "would we be able to afford it?" They said, of course. At the time we didn't even want it, I had stepped down from a management position due to stress and my wife was working nightshift. Because it was an investment and we would make money, this helped convince us however as it turned out, the maintenance payments went up steadily and drastically, we were not advised that this would happen.

With the loan payments and the maintenance payments, we can no longer afford it – as we predicted. The nightshift work pattern also took a toll on my wife's health and so she had to change to dayshift, this has affected our income considerably. Along with this, it is very difficult to get what you want, when we tried to book a holiday to Italy, they told us they didn't have anything available. To get what you want, you need to book about a year in advance, which is not suitable for this.

We haven't received a single penny from our so called investment and realise this was just a hook to get us to buy these pointless timeshares as investments.

Later in 2018, we realised what a mistake we'd made. We received a phone call at home from a company called Lifestyle Concierge, they said that they'd be able to get us out of the timeshare and they asked us to come meet with them in Tenerife – we paid for all of this. When we met with them, the meeting lasted about 3 hours and there was a lot of pressure, each time we appeared to be indecisive, they would send their boss over, pass us to another person. They would have a stern word with you. Eventually we agreed.

On the 9th of September 2018, we paid Lifestyle Concierge £8,950 to help us exit our timeshare with Club La Costa. We paid £500 on the day with a Vanquis credit card, and the remaining £8,450 was paid by bank transfer.

After paying this money, we heard nothing further from Lifestyle Concierge. When we tried to call them, they referred us to someone else, Anthony Bugg in Gibraltar – he wanted more money. I refused this and told him I'd already paid. When I tried to contact Lifestyle Concierge about this again I couldn't reach them.

Considering all of the above, we request relinquishment from our timeshare agreement with Club La Costa on the basis of misrepresentation.

We also seek to make a claim against Lifestyle Concierge for the actions of their agents who had misrepresented fact so as to induce us into the agreement."

- As can be seen, there is additional wording in the Second Client Statement referring to Fractional Club membership being sold as an investment on both occasions and this being of importance to Mr and Mrs H.

- Before I realised the discrepancy in the client statements, I had asked the PR for the original file containing the Second Client Statement, so I could see the digital evidence of when it was created (bearing in mind the Second Client Statement was dated over three years before it was provided to us in support of this complaint). The PR said it could not provide this because once the client statement was put into PDF format the original Word file was deleted.

- I also asked the PR why this complaint was not made until over a year after the client statement was dated. It said that the statement was originally taken to support efforts to cancel the timeshare with the Supplier, and claims related work was only undertaken later.

- I also asked Mr and Mrs H when the Second Client Statement was created, how this was done, if they did not write it themselves if they saw a copy of it once it was written and if it accurately reflected what they had told the PR and what they recall of what happened at the Time of Sale, if they recall any more details about how the Supplier described Fractional Club membership at the Time of Sale, why they decided to give up their Fractional Club membership (and with it any prospect of an investment return), why they decided to complain to Shawbrook and whether they were considering doing this at the time the client statement was written. Mr and Mrs H responded to say:

    - The client statement was created on 15 October 2020.

    - It was given over the phone on that date.

    - They did receive a copy.

    - It accurately reflects what they told the PR and what they remember of the sale.

    - The Supplier said Fractional Club membership wasn't a timeshare but was an investment.

    - They wanted to surrender the timeshare because they were told they only owned 2 bricks and that everyone else has to sell at the same time and if one owner refuses the sale doesn't go ahead. The Supplier always has a share so they would never sell and there was no end date given.

    - They decided to make a complaint to Shawbrook on 9 September 2018.

    - They decided to make the complaint to Shawbrook after realising they couldn't afford to go on holiday because of a change in their financial circumstances.

- After receiving the above responses, I realised the differences between the Original Client Statement and the Second Client Statement. So, I asked the PR for Mr and Mrs H's comments on when the client statement was amended, for evidence showing when the amendments were carried out, what prompted those amendments, that Mr and Mrs H saw and approved those amendments, and for the PR's comments on why it did not make clear when providing the Second Client Statement that it was a new version that had been amended. The PR responded to say:

    - The PR does not hold original Word versions of client statements once they are converted to PDF format – which in this case happened on 16 November 2023.

    - Client statements were taken by "precognition officers" and reviewed (and sometimes clarified and amended) by the PR's Head of Legal shortly afterwards, before claims were made to creditors.

    - The team that took the client statements was disbanded in 2020 and associated files were since deleted in accordance with data protection regulations.

    - Mr and Mrs H have confirmed when the statement was taken, that it was sent to them and that, to the best of their recollection given it was almost five years

ago, that the Second Client Statement reflected what they told the PR on 15 October 2020. The PR says this process was all completed before the claim was made to Shawbrook in November 2021.

- The Letter of Complaint is consistent with the Second Client Statement.

- The PR surmises that the Original Client Statement was sent in error on the complaint about the sale that took place in 2018 and that the Second Client Statement was the one that had been amended by their Head of Legal subsequent to a follow up call, which was the PR's process at the time.

- I note that the PR has not provided any additional comments from Mr and Mrs H despite my request that they confirm when the client statement was amended. So, I have no explanation from them about if or when the statement was amended and how that came about.

- In addition, the PR has not confirmed when the client statement was amended nor provided evidence of when this happened. It has suggested that its process was that a client statement may have been amended by the Head of Legal *"shortly after"* the Precognition Officer took the statement in October 2020 following a second phone call with Mr and Mrs H.

- The PR has provided no evidence of when any phone call with Mr and Mrs H that resulted in the amendments, nor any evidence of the Second Client Statement being sent to them or approved by them (despite my request for this, and it having previously provided file notes showing when the original client statement was taken, which would pre-date any later contact with Mr and Mrs H that led to the amendments).

- The client statement was taken on 15 October 2020. The Original Client Statement digital file was created and last modified on 21 December 2020. It seems to me that any amendments ought to have been completed by that time – given the PR's description of its processes. The PR still had this (in the original Word format) available to send to us on the complaint about the 2018 sale on 8 March 2022. This despite saying its process is to convert such files to PDF then delete the original. It is unclear why an outdated version of a client statement would be retained and how it could have been sent in support of the complaint about the 2018 sale if the process was to convert it to PDF and send this in support of the complaint before and deleting the original Word document.

- The PR surmises that the Original Client Statement was sent to us in error (rather than the Second Client Statement, which the PR implies would've existed at that time). But I do not find that very convincing when the PR and Mr and Mrs H did not respond to my colleague's provisional decision of 20 July 2025. That provisional decision was based on the Original Client Statement and pointed out this did not include references to Fractional Club being sold as an investment. If the Second Client Statement is an accurate reflection of what happened at the Time of Sale and what Mr and Mrs H told the PR about it, I cannot fathom why this was not raised as an issue in response to my colleague's provisional decision.

- Overall, I am not persuaded that the Second Client Statement is likely to reflect what happened at the Time of Sale. It makes the investment aspect of Fractional Club membership seem to be an important part of what the Supplier told Mr and Mrs H about Fractional Club membership and that this was also an important part of why

they bought it. But it does not seem very plausible that the Original Client Statement would not include anything about this if it had been so important and Mr and Mrs H had told the Precognition Officer about it (which they say they did). Had the PR been able to show me when and why the Client Statement was amended, or if Mr and Mrs H had mentioned this when responding to my original questions about how the statement was created, then I may have found it to be more reliable evidence.

- But as it stands, I do not think I can rely on the Second Client Statement to conclude that Mr and Mrs H purchased Fractional Club membership because it sold or marketed to them as an investment at the Time of Sale (that is, that they were motivated to make the purchase in the hope or expectation of making a profit).

- I acknowledge the Letter of Complaint says the Supplier described Fractional Club membership as an investment. And it could be this was because that is what Mr and Mrs H told the PR. But given the evidence in this case, while that is possible, I am not persuaded that it is likely. For example, the Letter of Complaint does not go into any detail that is specific to Mr and Mrs H's recollections of what happened at the Time of Sale.

- In addition to this, the Supplier's notes of a conversation with Mr and Mrs H shortly after the sale indicated that Mr and Mrs H were excited about the holiday opportunities that Fractional Club membership would provide them, given they usually only holidayed in the United Kingdom, and that they saw it as very good value. So, it seems clear that Mr and Mrs H were at least partly motivated to make the purchase because of the holiday opportunities Fractional Club membership would provide them. That doesn't mean Mr and Mrs H weren't interested in a share in the Allocated Property. After all, that wouldn't be surprising given the nature of the product at the centre of this complaint. But as the evidence in this case doesn'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 H'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 H 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>

The PR says that Mr and Mrs H were not given sufficient information at the Time of Sale by the Supplier for them 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 H 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 Mr and Mrs H nor the PR have persuaded me that they were deprived of information that would have led them 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.

Commission: The Section 140A unfair relationship complaint

Mr and Mrs H say 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.

As both sides already know, 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 ('Hopcraft, Johnson and Wrench').

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:

1. 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);

2. The failure to disclose the commission; and

3. 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:

1. The size of the commission as a proportion of the charge for credit;

2. The way in which commission is calculated (a discretionary commission arrangement, for example, may lead to higher interest rates);

3. The characteristics of the consumer;

4. 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); and

5. Compliance with the regulatory rules.

From my reading of the Supreme Court's judgment in Hopcraft, Johnson and Wrench, 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, Hopcraft, Johnson and Wrench 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 Hopcraft, Johnson and Wrench assists Mr and Mrs H in arguing that their credit relationship with the Lender was unfair to them 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 Mr and Mrs H, 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 Mr and Mrs H 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 Mr and Mrs H.

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 Mr and Mrs H entered into wasn't high. At £821.50, it was only 5% of the amount borrowed and even less than that (4.6%) as a proportion of the charge for credit. So, if they had 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 they either wouldn't have understood that or would have otherwise questioned the size of the payment at that time. After all, Mr and Mrs H wanted Fractional Club membership and had no obvious means of their own to pay for it. And at such a low level, the impact of commission on the cost of the credit they needed for a timeshare they wanted doesn't strike me as disproportionate. So, I think they would still have taken out the loan to fund their 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 Mr and Mrs H but as the supplier of contractual rights that they 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 them 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 Mr and Mrs H.

Section 140A: Conclusion

Given all the factors I've looked at in this part of my decision, and having taken all of them into account, I'm not persuaded that the credit relationship between Mr and Mrs H and the Lender under the Credit Agreement and related Purchase Agreement was unfair to them. And as things stand, I don't think it would be fair or reasonable that I uphold this complaint on that basis.

Commission: The Alternative Grounds of Complaint

While I've found that Mr and Mrs H credit relationship with the Lender wasn't unfair to them 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 Mr and Mrs H 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 Mr and Mrs H (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 Mr and Mrs H 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 because, for the reasons I also set out above, 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.

END OF COPY OF PROVISIONAL FINDINGS

The PR's response to my provisional findings

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 H 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 H 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 the PR didn't make any further comments in relation to those in their response to my PD. Indeed, the PR didn't say it disagrees with any of my provisional conclusions in relation to those other points. And since I haven't been provided with anything more in relation to those other points by either party, I see no reason to change my conclusions in relation to them as set out in my PD. So, I'll focus here on the PR's points raised in response.

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

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

Included in the PR's response to my PD was an oral hearing request along with the offer to produce sworn affidavits. Oral hearings are something that I can direct happen under DISP 3.5.5. However, the Financial Ombudsman Service is set up to decide complaints informally and it is for me as the decision maker to determine what evidence I think I need to determine what is a fair and reasonable outcome to a complaint. Having considered everything, I do not think I need to hold an oral hearing to fairly determine this complaint.

This is because both parties have already provided lengthy submissions. In this case, I have statements from Mr and Mrs H, other evidence, including the documents from the sale, and full submissions from PR and Lender to decide what I think was most likely to have happened. I'm satisfied I'm able to weigh up what Mr and Mrs H have said against the available evidence and arguments to determine what I think happened on the balance of probabilities without the need for an oral hearing. And as it's in everyone's interest to resolve this complaint as soon as possible, to grant a hearing at such a late stage would inevitably prolong the resolution of this case.

I understand that the PR also offers to have Mr and Mrs H 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, I wasn't persuaded that the evidence suggested that Mr and Mrs H purchased Fractional Club membership in whole or in part down to any breach of Regulation 14(3).

Here, the PR has stated that I've been inconsistent with my approach compared to previous decisions issued by the service and has provided examples it feels demonstrates this. But my decision is based on consideration of Mr and Mrs H'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 testimony Mr and Mrs H has provided demonstrates that this was the case. But, as I explained in my provisional decision, I'm not persuaded from the evidence that Mr and Mrs H have adequately demonstrated that the promise of profit was a motivating factor to their decision to move ahead with the purchase – principal or otherwise.

I accept that within the PR's new submissions Mr and Mrs H have provided further evidence, stating that Fractional Club membership was misrepresented as an investment and this was the main benefit of the purchase and that this was the consistent theme across all their evidence provided. However, with this there is a real risk that Mr and Mrs H's evidence 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, as well as the fact it says the evidence is consistent when it is not (as set out in detail in my provisional findings above). I

am mindful that the PR has not provided any additional comment about the client statements nor provided any additional evidence to show when the Second Client Statement was created. So, my concerns set out above in my provisional findings remain.

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 H'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 Mr and Mrs H's decision to make the purchase was motivated by the prospect of a financial gain. So, I still don't think the credit relationship between Mr and Mrs H 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 H's Section 75 claims, and I am not persuaded that the Lender was party to a credit relationship with them under the Credit Agreement that was unfair to them for the purposes of Section 140A of the CCA. And having taken everything into account, I see no other reason why it would be fair or reasonable to direct the Lender to compensate them.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H and Mrs H to accept or reject my decision before 23 February 2026.

Phillip Lai-Fang
Ombudsman