DRN-5915548

The Complaint

Mr and Mrs O's complaint is, in essence, that First Holiday Finance Ltd (the 'Lender') acted unfairly and unreasonably by (1) being party to an unfair credit relationship with them under Section 140A of the Consumer Credit Act 1974 (as amended) (the 'CCA') and (2) deciding against paying a claim under Section 75 of the CCA.

What happened

Mr and Mrs O were members of a timeshare provider (the 'Supplier'). But the product at the centre of this complaint is their membership of a timeshare that I'll call the 'Signature Collection' membership – which they bought on 25 August 2015 (the 'Time of Sale'). They entered into an agreement with the Supplier to buy 2,350 fractional points at a cost of £14,194 (the 'Purchase Agreement').

Mr and Mrs O paid for their Signature Collection membership by making an advance payment of £500 and by taking finance of £13,694 from the Lender (the 'Credit Agreement').

Signature Collection membership was asset backed – which meant it gave Mr and Mrs O 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 O – using a professional representative (the 'PR') – wrote to the Lender on 27 January 2015 (the 'Letter of Complaint') to raise a number of different concerns. As those concerns haven't changed since they were first raised, and as both sides are familiar with them, it isn't necessary to repeat them in detail here beyond the summary above.

The Lender dealt with Mr and Mrs O's concerns as a complaint and issued its final response letter on 6 February 2025, rejecting it on every ground.

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

Mr and Mrs O 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 ('PD') dated 14 October 2025, concluding the complaint should not be upheld. The findings from my PD are set out below.

> ***"The legal and regulatory context***
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> *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 published ombudsman decisions on very similar complaints – which can be found on the Financial Ombudsman Service's website. And with that being the case, it is not necessary to set out that context here.

What I've provisionally decided – and why

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 think this complaint should be upheld.

However, 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.

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

In short, a claim against the Lender under Section 75 essentially mirrors the claim, Mr and Mrs O could make against the Supplier.

The Lender rejected Mr and Mrs O 's claim on multiple grounds. I've considered the Lender's response, but even if I were to find the Lender should not have declined the claim for the reasons it did, I can't reasonably expect the Lender to meet that claim. That's because I need to take into account the Limitation Act 1980 (the "LA").

Mr and Mrs O purchased their membership on 25 August 2015. Although a court is only able to make a ruling under the LA, as it's relevant law, I've also considered any impact this may have on Mr and Mrs O's claim under Section 75 of the CCA.

As I've explained, a claim under Section 75 is a "like" claim against the creditor. It essentially mirrors the claim Mr and Mrs O could make against the Supplier. A claim for misrepresentation against the Supplier would ordinarily be made under Section 2(1) of the Misrepresentation Act 1967. And the limitation period to make such a claim expires six years from the date on which the cause of action accrued (see Section 2 of the LA). But a claim under Section 75, like this one, is also "an action to recover any sum by virtue of any enactment" under Section 9 of the LA. And the limitation period under that provision is also six years from the date on which the cause of action accrued.

The date on which the cause of action accrued here was the Time of Sale. I say this because Mr and Mrs O entered into the purchase of the timeshare product at that time based upon the alleged misrepresentations of the Supplier – which Mr and Mrs O say they relied upon. And as the Credit Agreement with the Lender provided funding to help finance that purchase, it was when they entered into the Credit Agreement that they allegedly suffered the loss.
Mr and Mrs O first notified the Lender of their Section 75 complaint on 27 January 2025. As more than six years had passed between the Time of Sale and when they first put their complaint to the Lender, I can't conclude that the Lender should accept responsibility for such a claim.

The PR has argued that the limitation period can be extended in the case of concealment or fraud. There are provisions within the LA to extend limitation periods in such circumstances, but I don't think this applies here. I say this as the notion that this product

was concealed as an investment would be inconsistent with the allegation made by the PR that the Supplier sold this product as an investment to Mr and Mrs O. In any event, I've considered whether these alleged misrepresentations could have been something that caused an unfair credit relationship.

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

There are 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 O 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. *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; and, when relevant*
5. *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 O and the Lender.

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

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

However, I've firstly considered whether the misrepresentations they allege were made by the Supplier in the context of their Section 75 claim could have caused any unfairness for the purposes of Section 140A.

It was said in the Letter of Complaint that Signature Collection membership had been misrepresented by the Supplier at the Time of Sale because Mr and Mrs O were:

1. *Told that they had purchased an investment that would "appreciate in value" when that was not true.*
2. *Told that they would own a share in a property that would increase in value during the membership term when that was not true.*
3. *Made to believe that they would have access to "the holiday apartment" at any time all year round when that was not true.*

Within their witness statement, Mr and Mrs O also said:

4. *They were told they could sell back their Signature Collection membership back to the Supplier .*

However, neither points 1 nor 2 strike me as misrepresentations even if such representations had been made by the Supplier (which I make no formal finding on). Telling prospective members that they were investing their money because they were buying a fraction or share of one of the Supplier's properties was not untrue. And even if the Supplier's sales representatives went further and suggested that the share in question would increase in value, perhaps considerably so, that sounds like nothing more than a honestly held opinion as there isn't enough evidence to persuade me that the relevant sales representative(s) said something that, while an opinion, amounted to a statement of fact that they did not hold or could not have reasonably held.

As for point 3, Mr and Mrs O say they were told they would have access to the holiday apartment at any time of the year. Mr and Mrs W did have access to a specific apartment in a specific week every other year which Mr and Mrs O mentioned within their witness statement so it appears they were aware of this distinguishing feature of their Signature Collection membership. This was made clear on the paperwork they signed at the Time of Sale so I can't agree a false statement of fact by the Supplier was made.

As for point 4, while it's possible that Signature Collection membership was misrepresented at the Time of Sale for this reason, I don't think it's probable. As I understand it, the Supplier does not purchase a resale, rental or re-purchase programme. This was made clear on the Members Declaration that Mr and Mrs O signed at the Time of Sale. So, I think it's less probable that the sales representatives told Mr and Mrs O something that was easily verifiable as being untrue.

So, while I recognise that Mr and Mrs O and the PR have concerns about the way in which Signature Collection membership was sold by the Supplier, I do not think this caused any unfairness in Mr and Mrs O's credit relationship with the Lender such that it warrants a remedy.

Turning to the points specifically raised in relation to the potential unfairness of the Relationship, Mr and Mrs O say they weren't aware off any credit or affordability checks being carried out before the Lender lent to them. I haven't seen anything to persuade me that was the case in this complaint given its circumstances. But even if I were to find that the Lender failed to do everything it should have when it agreed to lend (and I make no such finding), I would have to be satisfied that the money lent to Mr and Mrs O 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 O.

Connected to this is the suggestion by the PR that the Credit Agreement was arranged by an unauthorised credit broker, the upshot of which is to suggest that the Lender wasn't permitted to enforce the Credit Agreement. However, it looks to me like Mr and Mrs O knew, amongst other things, how much they were borrowing and repaying each month, who they were borrowing from and that they were borrowing money to pay for Signature Collection membership. And as the lending doesn't look like it was unaffordable for them, even if the Credit Agreement was arranged by a broker that didn't have the necessary permission to do so (which I make no formal finding on), I can't see why that led to a financial loss for Mr and Mrs O – such that I can say that the credit relationship in question was unfair on them as a result. And with that being the case, I'm not persuaded that it would be fair or reasonable to tell the Lender to compensate them, even if the loan wasn't arranged properly.

I acknowledge that Mr and Mrs O 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 Signature Collection 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 O made the decision to purchase Signature Collection 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 O 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 the PR says the credit relationship with the Lender was unfair to them. And that's the suggestion that Signature Collection 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

The Lender does not dispute, and I am satisfied, that Mr and Mrs O's Signature Collection 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 Signature Collection membership 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 the PR says that the Supplier did exactly that at the Time of Sale – saying, in summary, that Mr and Mrs O were told by the Supplier that Signature Collection membership was the type of investment that would only increase in value.

The term "investment" is not defined in the Timeshare Regulations. But for the purposes of this provisional decision, and 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.

A share in the Allocated Property clearly constituted an investment as it offered Mr and Mrs O 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 Signature Collection 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 <u>as an investment</u>. 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 Signature Collection. They just regulated how such products were marketed and sold.

To conclude, therefore, that Signature Collection membership was marketed or sold to Mr and Mrs O 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 Signature Collection 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 Signature Collection membership was marketed and/or sold by the Supplier at the Time of Sale as an investment in breach of regulation 14(3) of the Timeshare Regulations.

On the one hand, it is clear that the Supplier made efforts to avoid specifically describing membership of the Signature Collection as an 'investment' or quantifying to prospective purchasers, such as Mr and Mrs O, 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 Signature Collection membership as an investment. So, I accept that it's equally possible that Signature Collection membership was marketed and sold to Mr and Mrs O as an investment in breach of Regulation 14(3).

However, whether or not there was a breach of the relevant prohibition by the Supplier is not ultimately determinative of the outcome in this complaint for reasons I will come on to shortly. And with that being the case, it's not necessary to make a formal finding on that particular issue for the purposes of this decision.

Was the credit relationship between the Lender and the Consumer rendered unfair?

Having found that it was possible that the Supplier breached Regulation 14(3) of the Timeshare Regulations at the Time of Sale, I now need to consider what impact that breach had on the fairness of the credit relationship between Mr and Mrs O 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 O 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. To help me decide this point, I've carefully considered what Mr and Mrs O have said above how the membership was sold to them and their motivation for taking it out.

The PR provided a statement from Mr and Mrs O which provides their recollections about their purchase history with the Supplier, including their purchase of the Signature Collection membership in August 2015.

From what Mr and Mrs O have said, they entered into their first agreement with the Supplier after feeling pressured and in their own words they 'reluctantly agreed to sign a points allocation'. Then, whilst on holiday in September 2014, Mr and Mrs O entered into another agreement which I believe was a Signature Collection membership[1]. Mr and Mrs O say:

[1] Neither party supplied copies of Mr and Mrs O's previous membership agreements. I requested the parties to let me know, in response to my provisional decision, if my understanding of Mr and Mrs O's purchase history was incorrect. Neither party provided any comments around this in response to my PD.

"In September 2014 we booked our bonus 7 day holiday, we were again advised that we would be required to attend another meeting. They assured us it was to ensure we knew how to get the best out of our membership. We were taken to the meeting where once again we were shown options on holidays.

We quickly tried to explain to the rep that our points allocation was not meeting our expectations and we wanted to opt out of the contract as financially this was not what we thought we had signed up for.

……

At this point we felt we had to agree to do something to make the contract work for us…"

Mr and Mrs O then describe what they were told about the purchase I am considering in this decision:

"In August 2015 we booked our allocated week to the Signature Suite. Whilst checking in on arrival, we were again advised we had to attend a presentation. We were collected from the apartment and taken around the resort to visit various sizes of apartments that had been upgraded to Signature Suites, AII finished to very high standards with excellent facilities.

Back at the presentation, they spoke of families, bringing them on holiday or offering them our apartment which would require upgrading to a bigger apartment which was a larger points allocation.

That led again to the subject of swapping your allocated week to points which could be used to book various holidays rather than the one bi-annual week. Once again reluctant to sign anything, the salesperson reassured us that if things didn't work out for us, we would be able to sell the Fractional Right back to them at any points as the size, quality and location of the apartment were in high demand.

Having seen the outstanding quality of the apartment, our hope was, we had found Something that would work for us, with also the promise of being able to sell this product back to them. Having been there for hours, we now felt under so much pressure, and just wanted this to be over, and with still further pressurised selling we eventually and reluctantly agreed to the upgrade."

Their testimony, in my opinion, suggests that Mr and Mrs O were interested in holidays and agreed to upgrade in August 2015 following discussions with the Supplier about their holiday requirements, albeit that they said they felt pressured to do so.

Towards the end of their three-page testimony, Mr and Mrs O go on to describe what else they were told about their Signature Collection membership and I've extracted what I consider to be the relevant parts:

"We believed:

- *Fractional property ownership meant we owned a share of a luxury property and its assets.*
- *After the life period of the fractional, the property is sold and proceeds are distributed amongst owners.*
- *We were told there would be a monetary value when the property is sold."*

This seems to be a description of how the Signature Collection membership and the eventual sale of the Allocated Property worked, rather than a reason for why they bought it. As I've said Signature Collection membership was asset backed – which meant it gave Mr and Mrs O a share in the net sale proceeds, specifically 1.07% after their membership term ends along with holiday rights.

Taken as a whole, their statement doesn't suggest to me that Mr and Mrs O took from the Supplier that the Signature Collection membership was an investment from which they would make a financial gain i.e. a profit. It's also worth noting that Mr and Mrs O already held a Signature Collection membership, under which they already held a share in the net sale proceeds of a timeshare property. Mr and Mrs O say in their witness statement that they received a larger points allocation in August 2015 so I assume this resulted in them increasing their level of share and therefore the potential return they could expect at the end of their membership. However, Mr and Mrs O make no reference to this in their testimony and I would have expected this to have been mentioned if this was material to their decision to be upgraded from one Signature Collection membership to another.

Based on what I've considered, it seems to me that the reason why Mr and Mrs O went ahead with this purchase, based on their own recollections, was because (1) they felt pressured and (2) their previous membership wasn't working for them in terms of their holiday rights so this membership would suit their holiday needs better. And this seems to be corroborated by Mr and Mrs O's reservation history which shows various bookings since purchasing their Signature Collection membership.

So, I don't believe the prospect of a financial gain from Signature Collection membership was not an important and motivating factor when they decided to go ahead with their purchase. That doesn't mean they 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 Mr and Mrs O themselves don't persuade me that their purchase was motivated by their share in the Allocated Property and the possibility of a profit, I don't think a breach of Regulation 14(3) by the Supplier was likely to have been material to the decision Mr and Mrs O ultimately made.

On balance, therefore, even if the Supplier had marketed or sold the Signature Collection membership as an investment in breach of Regulation 14(3) of the Timeshare Regulations, I am not persuaded that Mr and Mrs O's decision to purchase Signature Collection 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 O 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

The PR says that Mr and Mrs O were not given sufficient information at the Time of Sale by the Supplier about the ongoing costs of Signature Collection membership. The PR also says that the contractual terms governing the ongoing costs of membership and the consequences of not meeting those costs were unfair contract terms.

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.

I acknowledge that it is also possible that the Supplier did not give Mr and Mrs O sufficient information, in good time, on the various charges they could have been subject to as Signature Collection members in order to satisfy the requirements of Regulation 12 of the Timeshare Regulations (which was concerned with the provision of 'key information'). But even if that was the case, I cannot see that the ongoing costs of membership were applied unfairly in practice. And as neither Mr and Mrs O nor the PR have persuaded me that they would not have pressed ahead with their purchase had the finer details of the Signature Collection's ongoing costs been disclosed by the Supplier in compliance with Regulation 12, I cannot see why any failings in that regard are likely to be material to the outcome of this complaint given its fact and circumstances.

As for the PR's argument that there were one or more unfair contract terms in the Purchase Agreement, I can't see that any such terms were operated unfairly against Mr and Mrs O in practice, nor that any such terms led them to behave in a certain way to their detriment. And with that being the case, I'm not persuaded that any of the terms governing Signature Collection membership are likely to have led to an unfairness that warrants a remedy.

Insolvency of the Supplier and its implications on the Credit Agreement

The PR argues that, because the Supplier's Spanish based sales companies have closed, Mr and Mrs O will not be recover any amounts that are expected to be awarded by the Spanish court. But this is of no impact on the complaint because (1) I can't see that the Supplier (i.e., company that entered into the Purchase Agreement) is itself the subject of a court judgment in Mr and Mrs O's favour nor can I see that the Lender has been party to any court proceedings and (2) even if they had a claim for something, there's no explanation as to why the Lender would be responsible to answer it.

Overall, given the facts and circumstances of this complaint, I'm not persuaded that it would be fair or reasonable to uphold it 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 O Section 75 claim, and I am not persuaded that the Lender was party to a credit relationship with them under the Credit Agreement that was unfair to them for the purposes of Section 140A of the CCA. And having taken everything into account, I see no other reason why it would be fair or reasonable to direct the Lender to compensate them".

I gave both parties the opportunity of responding and providing any further information or argument before I made my final decision. The Lender responded and said it agreed with my PD and had nothing further to add. The PR also responded on behalf of Mr and Mrs O and did not accept the PD, providing some further comments and arguments they wish to be considered.

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 set out in my PD But I would add that the following regulatory rules/guidance are also relevant:

The Consumer Credit Sourcebook ('CONC') – Found in the Financial Conduct Authority's (the 'FCA') Handbook of Rules and Guidance

Below are the most relevant provisions and/or guidance as they were at the relevant time:

CONC 3.7.3 [R]
CONC 4.5.3 [R]
CONC 4.5.2 [G]

The FCA's Principles

The rules on consumer credit sit alongside the wider obligations of firms, such as the Principles for Businesses ('PRIN'). Set out below are those that are most relevant to this complaint:

- Principle 6
- Principle 7
- Principle 8

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Following the responses from both parties, I've considered the case afresh and having done so, I've reached the same decision as that which I outlined in my provisional findings, for broadly the same reasons.

Again, my role as an Ombudsman isn't to address every single point which has been made to date, but to decide what is fair and reasonable in the circumstances of this complaint. If I have not commented on, or referred to, something that either party has said, this does not mean I have not considered it.

Rather, I have 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 O 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 O 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 it did not make any further comments in relation to those in their response to my PD. Indeed, it has not said it disagrees with any of my provisional conclusions in relation to those other points. And since I have not 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 will focus here on the PR's points raised in response.

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

Having considered the entirety of the credit relationships between Mr W and the Lender along with all of the circumstances of the complaint, I do not think the credit relationship between them were 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 in relation to Signature Collection membership, 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; and, when relevant
6. 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 W and the Lender given their circumstances at the Time of Sale.

The PR has highlighted under Section 140B (9) of the CCA, the burden of proof falls on the Lender to disprove the allegation that its relationship with Mr and Mrs O was unfair. I agree that this is correct, placing a burden on lenders during the process of litigation. That does not mean, though, that the Lender – or I – should take a claim at face value. There remains an onus on Mr and Mrs O to provide some evidence for the claim they are making, despite the overall burden of proof resting with the Lender, as was set out in the judgment in *Smith and another v Royal Bank of Scotland plc* [2023] UKSC 34 at paragraph 40. I also remind both parties that it is my role to make findings on what I consider to be fair and reasonable in all the circumstances of any given complaint.

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

In its response to my PD, the PR has reasserted its view that the Supplier marketed the Signature Collection membership to Mr and Mrs O as an investment and that this was a motivating factor in their decision.

I accepted in my PD that the membership may well have been marketed as an investment to Mr and Mrs O in breach of the prohibition in Regulation 14(3) of the Timeshare Regulations. I also explained that while the Supplier's sales processes left open the possibility that the sales representative may have positioned Signature Collection membership as an investment, it was not necessary for me to make a finding on this as it is not determinative of the outcome of the complaint. I explained that regulatory breaches do not automatically create unfairness and that such breaches and their consequences (if there are any) must be considered in the round, rather than in a narrow or technical way. The PR's response to my PD has not changed my view of this, and so whether the Supplier's breach of Regulation 14(3) led Mr and Mrs O to enter into the Purchase Agreement and the Credit Agreement remains an important consideration.

In my PD I explained the reasons why I did not think any breach of Regulation 14(3) had led Mr and Mrs O to proceed with their purchase. In short, I was not persuaded that their decision was motivated by the prospect of a financial gain (i.e., a profit). In reaching that view, I took into account the testimony given by Mr and Mrs O in the course of their complaint. I recognise the PR has interpreted Mr and Mrs O's testimony differently to how I have, and I have carefully considered its further comments. Ultimately though, they have not led me to a different conclusion.

The PR objects to the approach I have taken in assessing this aspect of the complaint, believing that I have detracted from the judgment in Shawbrook & BPF v FOS[2] and the case law that contributed to it, by requiring Mr and Mrs O to have been "primarily or mainly motivated" by the investment element in order to uphold the complaint. But I did not make such a finding. I said that, in my view, I considered one of the reasons as to why Mr and Mrs O went ahead with this purchase was based on the fact their previous membership was not working for them in terms of their holiday rights. Although the PR states that the underlying reason for Mr and Mrs O agreeing to upgrade at the Time of Sale was down to the intrinsic value of the Allocated Property, Mr and Mrs O's recollections do not persuade me that this was the case.

Based on what Mr and Mrs O have said, they upgraded due to the issues they experienced with booking holidays. There was no explicit reference to how the Supplier sold their Signature Collection membership to them as an investment in their witness statement. Towards the end of their statement, Mr and Mrs O summarise why they felt misled into purchasing multiple products rather than setting out their recollections about the specific sale at issue within his complaint. Putting that to one side, their witness statement only represents what they were potentially told by the sales representatives, rather than providing any insight as to what motivated them to purchase at the Time of Sale.

The PR says that as the Supplier's pricing sheet set out the "Unit share" Mr and Mrs O acquired under their Fractional Club membership, this shows the investment element played "quite an important role" in convincing them to purchase it. I do not agree with that analysis. The pricing sheet was a proforma document that captured a number of details about the purchase in a standardised format. The fact the unit share acquired was recorded indicates the purchase included an investment element. But it follows that the Supplier would have recorded that information irrespective of the customer's motivations for making the purchase. So I do not consider this document offers an insight into Mr and Mrs O's motivation for making their purchase.

So for the reasons given in my PD and above, I still do not think that any breach of Regulation 14(3), if there was one, was material to Mr and Mrs O's decision to purchase the Signature Collection membership.

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 O's Section 75 claim, and I am not persuaded that the Lender was party to a credit relationship with them under the Credit Agreement that was unfair to them for the purposes of Section 140A of the CCA. And having taken everything into account, I see no other reason why it would be fair or reasonable to direct the Lender to compensate them.

My final decision

For the reasons set out above, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs O to accept or reject my decision before 6 February 2026.

[2] R (on the application of Shawbrook Bank Ltd) v Financial Ombudsman Service Ltd and R (on the application of Clydesdale Financial Services Ltd (t/a Barclays Partner Finance)) v Financial Ombudsman Service [2023] EWHC 1069 (Admin) ('Shawbrook & BPF v FOS').

Sameena Ali
Ombudsman