DRN-5924983

The complaint

Mr and Mrs W'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.

Background to the complaint

Mr and Mrs W first purchased a Trial Membership from a timeshare provider (the 'Supplier') in 2009. They then upgraded this to a points-based membership in November 2009, providing them with 1,500 points. They purchased more points in April 2010, bringing the total points to 2,501. In October 2012, they traded in their existing membership for a fractional membership, increasing their points allocation to 2,832. And, on 27 April 2014 (the 'Time of Sale') they traded that membership for another timeshare ('Fractional Club') with the Supplier, buying 3,240 fractional points at a cost of £9,632 (the 'Purchase Agreement'). I have not seen a copy of any document to show the total cash value of the Fractional Club membership.

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

Mr and Mrs W paid for their Fractional Club membership by taking finance of £9,989 from the Lender (the 'Credit Agreement'), of which £357 covered some fees.

Mr and Mrs W – using a professional representative (the 'PR1') – wrote to the Lender on 9 October 2017 (the 'Letter of Complaint') to complain about 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.

During the course of the early stages of this complaint, the PR1 and Mr and Mrs W also raised other issues arising from the sale of the Fractional Club membership that do not neatly fit within the confines of a claim under s.75 CCA. Mr and Mrs W have expanded their complaint through a document titled "Witness Statement" which is dated 8 November 2017. I have considered these points in relation to whether they give rise to an unfair debtor-creditor relationship, where the relevant law is Section 140A-C of the CCA.

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

Mr and Mrs W say that the Supplier made a number of pre-contractual misrepresentations at the Time of Sale. The PR1 presented the specific allegations as an appendix to the Letter of Complaint in the form of a questionnaire completed by Mr and Mrs W through ticking boxes next to prepared questions. I have provided further thoughts on the way this complaint is presented by the PR1 below. This document includes a section titled "*The Representations Made To Me*" The boxes ticked are next to text saying "*The salesman said":*

- The timeshare he was selling was an investment.

- It was valuable.
- It was only for sale that day.
- They were easy to resell.
- The timeshare had a resale value.
- I could give it up at any time – no further charge.
- I could exchange it free of charge.
- It was a desirable product.

There is also a handwritten section to the questionnaire where Mr and Mrs W have written in some additional allegations of misrepresentation. These are that the Supplier:

1. told them that the Supplier's holiday resorts were exclusive to its members when that was not true as they struggled with the availability of accommodation at locations of their choice.
2. told them the maintenance fees were set at a fixed rate, when that was not true.
3. told them they could "*sell our shares after a certain period*" when this was untrue as they cannot "*get rid of [the membership] without club approval*".

Mr and Mrs W say that they have a claim against the Supplier in respect of one or more of the misrepresentations set out above, and therefore, under Section 75 of the CCA, they have a like claim against the Lender, who, with the Supplier, is jointly and severally liable to Mr and Mrs W.

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

Mr and Mrs W say that they were not told that the Fractional Club was "*dormant or that it did not trade".*

As a result of the above, I think Mr and Mrs W are saying 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 them.

(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 and Mrs W 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:

1. Fractional Club membership was marketed and sold to them as an investment.
2. The Supplier was paid commission by the Lender, and they were not told this.
3. The Supplier did not provide them with the information they needed to better understand the product and how it worked.

The Lender dealt with Mr and Mrs W's concerns as a complaint and issued its final response letter on 13 March 2018 rejecting it on every ground.

Mr and Mrs W then referred the complaint to the Financial Ombudsman Service. Their complaint was assessed by an Investigator who, having considered the information on file, upheld the complaint on its merits. The PR1 is no longer involved in representing Mr and Mrs W on their complaint. They have since instructed another professional representative (the 'PR2').

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

I considered the matter afresh and issued a provisional decision (the 'PD') dated 12 September 2025. In that decision, I said:

"I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

And having done that, I do not currently think this complaint should be upheld.

But before I explain why, I want to make it clear that my role as an Ombudsman is not to address every single point that has been made to date. Instead, it is to decide what is fair and reasonable in the circumstances of this complaint. So, if I have not commented on, or referred to, something that either party has said, that does not mean I have not considered it.

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 and Mrs W 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. I have not seen confirmation of the total cash price of the Fractional Club membership, as I expect there would be a value attributed to the previous membership Mr and Mrs W traded in as part of the consideration, which would be in addition to the amount stated on the agreement. But, as the total cash value of the traded membership was £7,943, I find it very unlikely that the trade-in value combined with the price of the Fractional Club membership would exceed the upper limit under section 75 of £30,000. The Lender does not dispute that the relevant conditions are met in this complaint. So, I think it is more likely than not that Section 75 applies, which means that if I find that the Supplier is liable for having misrepresented something to Mr and Mrs W 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 and Mrs W were told they were buying an "investment". The questionnaire does not elaborate on how this alleged representation was made to Mr and Mrs W, or even that it was not true, but I note that when they became Fractional Club members, Mr and Mrs W did buy an interest in a specific piece of "real property. And, telling prospective members that they were buying a fraction or share of one of the Supplier's properties was not untrue. Mr and Mrs W's share in the Allocated Property was clearly the purchase of a share of the net sale proceeds of a specific property in a specific resort. And while they and the PR1 might have questioned the exact legal mechanism used to give them that interest, it did not change the fact that they acquired such an interest.

As for the rest of the Supplier's alleged pre-contractual misrepresentations, while I recognise that Mr and Mrs W have concerns about the way in which their Fractional Club membership was sold, they have not persuaded me that there was an actionable misrepresentation by the Supplier at the Time of Sale for the other reasons they allege. And I say that because they have not demonstrated to me that they were told they would have availability whenever they wanted, or that they were unable to book holidays. The Supplier says they enjoyed 18 holidays over the course of their various memberships and had a further 10 holidays booked for future dates at the time of its response. I have not been given any details about any specific times they were unable to book the holidays they wanted. I have not been shown any evidence to support their position that the maintenance fees increased every year or been given any detailed testimony to persuade me that the Supplier said the fees would stay the same. And lastly, I haven't been given enough details of what they were told about the possibility of reselling the membership, or that they tried and were unsuccessful in selling the membership. I will also explore this point from the perspective that this caused an unfair debtor-creditor relationship between Mr and Mrs W and the Lender below.

As I have not been given any persuasive testimony or evidence to support these allegations, on balance I am not persuaded that the Supplier misrepresented Fractional Club membership to Mr and Mrs W. What's more, as there's nothing else on file that persuades there were any false statements of existing fact made to Mr and Mrs W by the Supplier at the Time of Sale, 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 and Mrs W 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 and Mrs W 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 and Mrs W say that they were sold membership to a "dormant" club. But I am unsure why they say this as it is not supported with any evidence or testimony. It also looks like they made use of their fractional points to take holidays on several occasions, and that they had future holidays booked at the time they first complained. I accept that they may not have been offered availability to take holidays at particular times or places. But I have not seen enough to persuade me that the Supplier had breached the terms of the Purchase Agreement.

Overall, therefore, from the evidence I have seen to date, I do not think the Lender is liable to pay Mr and Mrs W 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 and Mrs W 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 they also raised issues that I don't think fall neatly into claims under Section 75. I have therefore

considered whether 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 and Mrs W 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 and Mrs W'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 and Mrs W 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*

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

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 and Mrs W and the Lender.

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

Mr and Mrs W's complaint about the Lender being party to an unfair credit relationship was made for several reasons, all of which I set out at the start of this decision.

Mr and Mrs W's Commission Complaint

I note that one of Mr and Mrs W's concerns relates to alleged payments of commission by the Lender to the Supplier for acting as a credit broker and arranging the Credit Agreements. The Supreme Court's recent judgment Johnson v FirstRand Bank Ltd, Wrench v FirstRand Bank Ltd and Hopcraft v Close Brothers Ltd [2025] UKSC 33 ('Johnson, Wrench and Hopcraft') clarified the law on payments of commission – albeit in the context of car dealers acting as credit brokers. In my view, the Supreme Court's judgment sets out principles which appear capable of applying to credit brokers other than car dealer–credit brokers. At present, I do not know enough about the relevant arrangements in place at the Times of Sale. So, once I know more, I will finalise my findings on this complaint.

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 and Mrs W's Fractional Club membership met the definition of a "timeshare contract" and was a "regulated contract" for the purposes of the Timeshare Regulations.

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

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

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

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

Mr and Mrs W's share in the Allocated Property clearly, in my view, constituted an investment as it offered them the prospect of a financial return – whether or not, like all

investments, that was more than what they first put into it. But the fact that Fractional Club membership included an investment element did not, itself, transgress the prohibition in Regulation 14(3). That provision prohibits the marketing and selling of a timeshare contract as an investment. It doesn't prohibit the mere existence of an investment element in a timeshare contract or prohibit the marketing and selling of such a timeshare contract per se.

In other words, the Timeshare Regulations did not ban products such as the Fractional Club. They just regulated how such products were marketed and sold.

To conclude, therefore, that Fractional Club membership was marketed or sold to Mr and Mrs W 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 and Mrs W, the financial value of their share in the net sales proceeds of the Allocated Property along with the investment considerations, risks and rewards attached to them. There were, for instance, disclaimers in the contemporaneous paperwork that state that Fractional Club membership was not sold to Mr and Mrs W as an investment. For example, the fifth statement on the document titled "Member's Declaration" reads:

"We understand that the purchase of our Fraction is for the primary purpose of holidays and is not specifically for direct purposes of a trade in and that [the Supplier] makes no representation as to the future price or value of the Fraction".

And within the document titled "Fractional Property Owners Club Information Statement", it says:

"The purchase of Fractional Rights is for the primary purpose of holidays and is neither specifically for direct purposes of a trade in nor as an investment in real estate. [The Supplier] makes no representation as to the future price or value of the Allocated Property or any Fractional rights".

With that said, the paperwork provided by the Supplier at the Time of Sale also includes the following disclaimer, which to me might suggest the Fractional Club membership ought to be considered by a potential customer as an investment opportunity:

"The Vendor, any sales or marketing agent and the Manager and their related businesses (a) are not licensed investment advisors authorized by the Financial Services Authority to provide investment or financial advice; (b) all information has been obtained solely from their own experiences as investors and is provided as general information only and as such it is not intended for use as a source of investment advice and (c) all purchasers are advised to obtain competent advice from legal, accounting and investment advisors to determine their own specific investment needs; (d) no warranty is given as to any future values or returns in respect of an Allocated Property."

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. And I accept that it's possible that Fractional Club membership was marketed and sold to Mr and Mrs W 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.

However, I don't think it is necessary to make a finding on this point because, as I'll go on to explain, I am not currently persuaded that would make a difference to the outcome in this complaint anyway.

Was the credit relationship between the Lender and Mr and Mrs W 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 and Mrs W 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 and Mrs W, 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.

But I am not currently persuaded that it did. I will explain why.

Mr and Mrs W, through the PR1, submitted their Letter of Complaint alongside a questionnaire that appears to have been put together by the PR1. Mr and Mrs W have ticked, or left blank, various boxes next to some set questions. By its very nature, I find this

form of testimony to be significantly limiting in that they are simply responding to prompts for information, rather than providing their own version of events at the Time of Sale. I have thought about the answers they have given, but for this reason, I have not placed much weight on the responses. As part of the questionnaire, there is a section where Mr and Mrs W have given handwritten responses to some general prompts about what they say they were told and why they feel the timeshare was misrepresented to them. As these answers provide more substantial information, and in their own words, I have placed more weight on those parts of their submission. I will go through my assessment of all the evidence below.

In the document titled "Witness Statement", which was prepared by the PR1 and signed and dated by Mr and Mrs W, it is said:

"…the [similar fact] evidence explains in detail how others and ourselves were exposed to the same representations, which caused others and us to believe that what was being sold was valuable, was an ever-increasing asset, which would mature, in time, delivering an investment return by way of promised redemptions."

I have considered this statement in tandem with the answers Mr and Mrs W have given in the accompanying questionnaire. I note that our service received an almost identical copy of this statement on Mr and Mrs W's complaint about an earlier timeshare purchase. As such, I don't think I can place much, if any, weight on the contents of this statement, as it is very generic in nature, to the extent that it provides very little specific information about the events at the Time of Sale. And I am not persuaded that I can rely on what the PR1 has termed "similar fact evidence" as I need to consider Mr and Mrs W's complaint on its own facts. As I will explain, I don't think their supporting evidence suggests the Supplier led them to enter the agreement on the belief their Fractional Club membership would deliver them a profit upon the sale of the Allocated Property.

Here, in the section titled "The Representations Made to Me", they tick the boxes (among others) next to the following text:

"The salesman said…

- *The timeshare he was selling was an investment.*
- *It was valuable.*
- *They were easy to resell.*
- *The timeshare had a resale value."*

They left the boxes next to the following text empty:

- *"It was worth a lot of money on the resale market.*
- *They could sell it for me at any time.*
- *The future sale would make me money."*

I have also considered Mr and Mrs W's answers to a further section of the questionnaire, titled "Timeshare Points System". Here, they leave the following boxes empty:

"I was told the points which I bought…

- *Were an asset.*
- *Would go up in value."*

So, to me, Mr and Mrs W's answers suggest that they were told by the Supplier that the timeshare was an investment, but they have not been consistent in making this allegation, as

it's unclear why this was the case when they also suggest they were not told that the future sale would make them money. I recognise that the questionnaire specifically asks Mr and Mrs W to say whether they were told the points were sold to them as an asset that would increase in value, and not any other aspect of the membership such as the Allocated Property. But that in any case, it seems to me from reading these answers that the future value of the timeshare was not discussed. So, as I've said above, I don't think I can place much, if any, weight on their responses to these prompts as Mr and Mrs W have not made these allegations in their own words, but in addition to that reason, I find that they are not clear and consistent in making them. Putting aside the difficulty I think the Supplier faced in selling the Fractional Club membership without breaching Regulation 14(3), I can't agree Mr and Mrs W proceeded with their purchase on the basis that it was sold to them as an investment that could have led to them making a profit.

Parts of the questionnaire and supporting documents have been filled in by Mr and Mrs W in their own words, with some general prompts to aid the structure of their allegations. In contrast to the tick-box section, I find this evidence to be more plausible and persuasive in nature because I think Mr and Mrs W were able to freely explain what they feel has gone wrong with their timeshare purchase. So, I have put more weight on what they have written by hand. In particular, I have looked at a section of the questionnaire accompanying the Letter of Complaint titled "This Section Deals With How You Were Induced". Mr and Mrs W provided comments on the sale of their first Fractional Club purchase which falls outside the scope of this complaint as it was funded by another lender, but I think it provides some context to the purchase in question. They say:

"I came to be in presentation while on holiday at [Resort]. At the presentation it was said that I didn't have enough points to get the accommodation I needed and the destinations I wanted to go. So I purchased the product."

And regarding the Fractional Club membership they purchased at the Time of Sale, using finance from the Lender, they say:

"While in [Tenerife] I went to another presentation I was told I had to go to get updated on procedures and products. It was told to me because of lack of availability and points increase I need to upgrade the product".

So, I think Mr and Mrs W's handwritten evidence makes it clear that they were induced into making the purchase in order to gain access to holiday accommodation, which they were told they would receive if they purchased more points.

I have also considered the handwritten section of the questionnaire where Mr and Mrs W outline the Supplier's alleged misrepresentations. Here, their concerns are about the availability of accommodation, the ongoing costs associated with the membership, and the ability to "sell [their] shares after a certain period". So, I am persuaded these were the issues that were most likely driving their complaint. It is this third point that I will now consider in more detail. It is not clear to me if Mr and Mrs W's mention of "shares" is a reference to the fractional rights they held in the Allocated Property, but I think this is a reasonable interpretation of what they have said. So, this would mean that they say they "cannot get rid of [the shares] without club approval" and this was of material significance to them because of "limitations placed on who [they] could sell to" and that the "club can veto the sale". But I have not seen any evidence to suggest that something has, or will, go wrong with the sale of the Allocated Property. And I note that the supporting paperwork explains that the future sale of the Allocated Property would be carried out by a third-party and not by Mr and Mrs W directly, so I don't agree they have shown any potential unfairness that might arise from the future sale of the Property.

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 W'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 W 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 and Mrs W when they purchased membership of the Fractional Club at the Time of Sale. But they and the PR1 say that the Supplier failed to provide them with all of the information they needed to make an informed decision.

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.

Mr and Mrs W say they were not provided with documents that were relevant to their decision to purchase the Fractional Club membership and have listed these in their Letter of Complaint. But they have not explained why this information was important to them, or the effect this has had on them and their ability to understand how their membership worked, the benefits they would receive, and the costs associated with the membership. I have examined what I have seen and considered whether the relationship between them and the Lender might have been rendered unfair because of the provision of information. In doing so, I have considered whether the Supplier might have breached Regulation 12 of the Timeshare Regulations, the UTCCR, and the CPUT Regulations.

Given the facts and circumstances of this complaint, I am not persuaded that the Supplier has committed any breaches of the above regulations, or that this was likely to have prejudiced Mr and Mrs W'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. I say this because I can see the Fractional Club membership sales documents show that they received 3,240 points that they could exchange for holiday accommodation. The 'Terms and Conditions' and 'Member's Declaration' provide Mr and Mrs W with information about how the membership would work, the rights Mr and Mrs W gain through their membership, and what would happen at end of the membership term. It also gives information about the ongoing costs associated with the membership. I have not seen any evidence to suggest to me that they did not receive something that was important to their decision to enter the membership.

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

In conclusion, given the facts and circumstances of this complaint, I was not persuaded that the Lender was party to a credit relationship with Mr and Mrs W 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 could see no other reason why it would be fair or reasonable to direct the Lender to compensate them.

Following my PD, I also communicated how I was not persuaded that Mr and Mrs W's credit relationship with the Lender was unfair to them for reasons relating to the commission arrangements between it and the Supplier.

The Lender accepted the PD and did not add anything further.

The PR2 also responded – it did not accept the PD and provided some further comments and evidence it wishes for me to consider.

Neither party provided anything further on the matters relating to the payment of commission.

Having received the relevant responses from both parties, I'm now finalising my decision.

The legal and regulatory context

In considering what is fair and reasonable in all the circumstances of the complaint, I am required under DISP 3.6.4R to take into account: relevant (i) law and regulations; (ii) regulators' rules, guidance and standards; and (iii) codes of practice; and (where appropriate), what I consider to have been good industry practice at the relevant time.

The legal and regulatory context that I think is relevant to this complaint is, in many ways, no different to that shared in several hundred published ombudsman decisions on very similar complaints – which can be found on the Financial Ombudsman Service's website. And with that being the case, it is not necessary to set out that context in detail here. But I would add that the following regulatory rules/guidance are also relevant:

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

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]

<u>The FCA's Principles</u>

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 the PD, for broadly the same reasons.

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

Rather, I've focused here on addressing what I consider to be the key issues in deciding this complaint and explaining the reasons for reaching my final decision.

The PR2's further comments in response to the PD relate to the issue of whether the credit relationship between Mr and Mrs W and the Lender was unfair. In particular, the PR2 has provided further comments in support of the allegation that the Supplier sold the Fractional Club membership to Mr and Mrs W as an investment at the Time of Sale.

As outlined in my PD, the PR1 originally raised various other points of complaint, all of which I addressed at that time. But the PR2 didn't make any further comments in relation to those in its response to my PD. As neither party responded to me on that aspect of the complaint, or on the matter of commission, and I haven't been provided with anything more in relation to those other points by either party, I see no reason to reach a different outcome than that which I already reached. So, I'll focus here on the PR2's points raised in response to my PD.

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

The PR2 has requested that I conduct an interview with Mr and Mrs W to allow them to present their case. 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 been provided a copy of a questionnaire from the PR1 that Mr and Mrs W filled in, which included testimony in their own words, other evidence, including the documents from the sale, and full submissions from the PR1, and Lender. I'm satisfied I'm able to weigh up what Mr and Mrs W said already against the available evidence and arguments to determine what I think happened on the balance of probabilities without the need for an oral hearing.

The PR2 also says I did not consider the document titled "*Witness Statement*". I have considered this statement, which was prepared by the PR1 on their behalf, and it refers me to the accompanying questionnaire, which I have discussed at length in my PD. I explained why I did not feel I ought to place much weight on the answers given in the tick boxes, but that I had thought carefully about the written testimony provided by Mr and Mrs W and had placed more weight on that part of the questionnaire for the reasons I gave in the PD.

The PR2 says that I should not conclude that Mr and Mrs W went ahead with the purchase to gain holidays as they already had access to holidays through their existing membership and there was no evidence from the Supplier to show that they were struggling to book holidays.

I reiterate what I say in the PD about having considered the following part of the completed questionnaire, where the PR1 asked Mr and Mrs W to complete the following:

a) Please explain how you came to be in the sales presentation
b) What was said to you
c) Where it was said
d) What triggered you to enter the sales presentation

Mr and Mrs W said:

"While in [Tenerife] I went to another presentation I was told I had to go to get updated on procedures and products. It was told to me because of lack of availability and points increase I need to upgrade the product".

So, as I've said in my PD, Mr and Mrs W very clearly answer that they *were* motivated by the prospect of gaining additional points to allow them to have better holiday availability. Moreover, Mr and Mrs W do *not* suggest that they were induced into making the purchase because they were motivated by the prospect of making a financial gain from the future sale of the Allocated Property.

The PR2 argued that I've been inconsistent with my approach compared to previous decisions issued by the service. But my decision is based on the specific evidence and circumstances of Mr and Mrs W's complaint. Each complaint turns on its own facts; an ombudsman's decision on how one timeshare sale occurred does not determine his/her, or any other ombudsman's, decisions about the facts of other sales at different times to different purchases.

The PR2 also says the outcome of this complaint is inconsistent with the previous findings reached by our investigator about an earlier purchase of a different product with the same Supplier. But the PR2 ought to be aware that our service provides a two-stage process if the investigator's findings are appealed by either party. The fact that an ombudsman did not need to become involved in determining one complaint does not mean that I should now reach the same conclusion as that investigator did about this complaint.

So, as I said before, even if the Supplier had marketed or sold the Fractional Club 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 W's decision to enter into the Purchase Agreement at the Time of Sale was motivated by the prospect of a financial gain. So, I still don't think the credit relationship between Mr and Mrs W and the Lender was unfair to them for this, or any other, reason.

Conclusion

In conclusion, given the facts and circumstances of this complaint, I am not persuaded that the Lender was party to a credit relationship with Mr and Mrs W 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 don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs W to accept or reject my decision before 16 February 2026.

Andrew Anderson
Ombudsman